REPORT

ON

POWERS OF ENTRY

ONTARIO LAW REFORM COMMISSION

Ministry of the
Attorney
General

1983

The Ontario Law Reform Commission was established by section 1 of the *Ontario Law Reform Commission Act*. Section 2(1) of the Act states that it is the function of the Commission to inquire into and consider any matter relating to (a) reform of the law having regard to the statute law, the common law and judicial decisions; (b) the administration of justice; (c) judicial and quasi-judicial procedures under any Act; and (d) any subject referred to it by the Attorney General. The Commissioners are:

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Ontario
Law Reform
Commission

The Honourable R. Roy McMurtry, Q.C.,
Attorney General for Ontario

Dear Mr. Attorney:

Pursuant to section 2(1)(*a*) of the *Ontario Law Reform Commission Act*, the Commission undertook a study of powers of entry. The Commission has now completed its consideration of the subject and, accordingly, has the honour to submit herewith its *Report on Powers of Entry*.

CHAPTER 1

INTRODUCTION

This Report is concerned with powers of entry conferred on public officials by Ontario statutes, regulations, and by-laws.

The common law jealously protected possessory interests in real property, particularly dwellings, and narrowly limited the circumstances in which a stranger, even an officer of the Crown, could enter on the land of another without consent. By way of contrast, in the course of our research, we located some 1,359 powers of entry, of which 1,016 are to be found in the public statutes of the Province.[1]

When the Royal Commission Inquiry into Civil Rights, popularly known as the "McRuer Commission", compared the existence of numerous statutory powers of entry with the common law position, it concluded that "the individual is now much more vulnerable to invasions of his rights than at any time in the past".[2] Several recommendations were proposed in order to afford greater protection to the individual,[3] some of which were implemented subsequently by legislation.

It is clear that what was once regarded as an extraordinary measure has now become commonplace in Ontario statutes and subordinate legislation. Legislation has conferred upon the various organs of government supervisory and regulatory control over a wide range of commercial and other activities. We realize that, in certain circumstances, these responsibilities could not be discharged effectively without a power of entry. Nevertheless, the existence of numerous powers of entry raises the fundamental issue of reconciling the public interest in effective regulation with the interest in individual privacy.

Powers of entry formed only one of many topics considered by the McRuer Commission. The Ontario Law Reform Commission was of the opinion that there was a need for a further study, devoted to powers of entry, that could build upon the pioneering work of the McRuer Commission; hence this Report.

We would note that our Report is not restricted to powers of entry on

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[1] See *infra*, ch. 2, at 9.

[2] Province of Ontario, *Royal Commission Inquiry into Civil Rights*, Report No. 1 (1968), Vol. 1, at 413.

[3] See discussion *infra*, ch. 4, at 25-28.

land. An important point, which should be stressed, is the function of powers of entry. These powers do not exist in a vacuum; indeed, a bare power to enter land, unrelated to any purpose for the entry, would be meaningless. Rather, powers of entry are inevitably conferred to permit the exercise of other intrusive powers. We are, therefore, of the view that it would be inappropriate to consider powers of entry alone, without examining the activity of public officials once an entry has been effected. We are also concerned with intrusive powers that may be exercised by public officials in relation to chattels, because the existence of these analogous powers raises the same issue as that posed by powers of entry on land. This Report, however, is confined to powers of entry conferred upon public authorities. While, under some legislation, powers of entry have been granted to private individuals,[4] these are not within the ambit of our study. Nor does this Report comprehend search and seizure under the *Criminal Code*[5] or search and seizure under the *Provincial Offences Act*,[6] except insofar as the relevant provisions of the latter statute have been incorporated by reference into statutory powers of entry.

We shall commence our examination of powers of entry by discussing the existing law. We shall then outline how powers of entry are exercised in practice. We also shall review the reform initiatives that have been undertaken in Ontario, Manitoba, Australia, and New Zealand. Finally, we shall state our recommendations for reform. We have placed these recommendations in statutory form in a Draft Bill, entitled the *Powers of Entry Act*, which is annexed to this Report as Appendix 1.

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[4] See, for example, *Bees Act*, R.S.O. 1980, c. 42, s. 3(1); *Condominium Act*, R.S.O. 1980, c. 84, s. 6(4); *Land Titles Act*, R.S.O. 1980, c. 230, s. 96; and *Line Fences Act*, R.S.O. 1980, c. 242, s. 21(4).

[5] R.S.C. 1970, c. C-34.

[6] R.S.O. 1980, c. 400, s. 142.

CHAPTER 2

THE EXISTING LAW

In this chapter, we shall discuss the existing law respecting powers of entry on land and associated powers, as well as intrusive powers affecting chattels. Our discussion falls under three headings. First, we shall sketch the common law background against which these powers were enacted. Thereafter, we shall review some features of the statutory powers. Finally, we shall consider the impact of the *Canadian Charter of Rights and Freedoms*[1] upon this area of law.

1. COMMON LAW BACKGROUND

The common law constitutes the background against which the legislative powers that are the subject of this Report have been enacted. At an early stage, the common law evinced its characteristic concern for the protection of private property interests. An intentional entry on land, without the consent of the person in possession, gave rise to the tort of trespass to land, for which the entrant was liable in damages, regardless of whether harm was caused by his action.[2] An intentional interference with chattels in the possession of another, without consent, rendered the wrongdoer liable in damages for the tort of trespass to chattels.[3] Where the interference was serious, the wrongdoer could incur liability for the tort of conversion, in which case he would be obliged to pay the full value of the chattel.

The common law was particularly vigilant in the protection of dwellings, as distinct from other kinds of premises. The well-known adage that "a man's home is his castle" has its origins in *Semayne's Case*,[4] a seven-

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[1] Being Part I of the *Constitution Act, 1982*, which itself is scheduled to the *Canada Act 1982*, c. 11 (U.K.).

[2] An unauthorized entry on land may give rise to liability under the *Trespass to Property Act*, R.S.O. 1980, c. 511. Forcible entry may lead to liability under the *Criminal Code*, R.S.C. 1970, c. C-34, s. 73(1).

[3] An unauthorized interference with the chattels of another may give rise to liability under Part VII of the *Criminal Code*, *supra*, note 2.

[4] (1604), 5 Co. Rep. 91a, 77 E.R. 194 (K.B.). The same point was dramatically made in the famous speech of William Pitt, Earl of Chatham, which is quoted in Denning, *Freedom Under the Law* (1949), at 103:

> The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail – its roof may shake – the wind may blow through it – the storm may enter – the rain may enter – but the King of England cannot enter – all his force dares not cross the threshold of the ruined tenement.

teenth century decision concerning forcible entry. However, while the common law sought to grant protection to individual property rights, it did allow defences to conduct that otherwise would be tortious. In this way, the courts acknowledged that private interests, while undoubtedly of crucial importance, were not absolute. The full flavour of the common law attitude to land is revealed in the following passage from the reasons for judgment of Lord Camden L.C.J. in *Entick v. Carrington*:[5]

> The great end, for which men entered into society, was to secure their property. That right is preserved sacred and incommunicable in all instances, where it has not been taken away or abridged by some public law for the good of the whole. The cases where this right of property is set aside by positive law, are various. Distresses, executions, forfeitures, taxes, etc. are all of this description; wherein every man by common consent gives up that right, for the sake of justice and the general good. By the laws of England, every invasion of private property, be it ever so minute, is a trespass. No man can set his foot upon my ground without my licence, but he is liable to an action, though the damage be nothing; which is proved by every declaration in trespass, where the defendant is called upon to answer for bruising the grass and even treading upon the soil. If he admits the fact, he is bound to shew by way of justification, that some positive law has empowered or excused him. The justification is submitted to the judges, who are to look into the books; and if such a justification can be maintained by the text of the statute law, or by the principles of common law. If no such excuse can be found or produced, the silence of the books is an authority against the defendant, and the plaintiff must have judgment.

Moreover, the legal position did not differ substantially when the entry was motivated by a desire to enforce the criminal law. While it might be expected that there would be a strong public interest in the detection of criminal activity, which would outweigh the interest in personal privacy, the courts admitted few justifications for entry on land. At common law, search and seizure that required an entry on land could be effected only under warrant, which was available in a single situation – in order to search for stolen goods.[6] In cases other than search and seizure, entry without a warrant was rarely permitted:[7] for example, forcible entry into a dwelling house was allowed "in order to terminate an affray, or to prevent an occupant from doing serious bodily injury to another person in the house".[8] Further, the common law rejected the argument that special

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[5] (1765), 19 How. St. Tr. 1029 (C.P.), at 1066.

[6] See Leigh, *Police Powers in England and Wales* (1975), at 169 and 185, and the Commission of Inquiry Concerning Certain Activities of the Royal Canadian Mounted Police, Second Report, *Freedom and Security Under the Law* (1981), Vol. 1, at 120.

[7] It should be observed that, in Canada, the right of peace officers to effect a forcible entry for the purpose of arrest continues to be governed by the case law: see *Eccles v. Bourque*, [1975] 2 S.C.R. 739, 50 D.L.R. (3d) 753, 19 C.C.C. (2d) 129; *R. v. Landry* (1981), 34 O.R. (2d) 697, 63 C.C.C. (2d) 289 (C.A.); and *R. v. Stonechild* (1981), 10 Man. R. (2d) 43, 61 C.C.C. (2d) 251 (Co. Ct.). See, also, *Colet v. The Queen*, [1981] 1 S.C.R. 2, 119 D.L.R. (3d) 521, 57 C.C.C. (2d) 105 (subsequent reference is to 1 S.C.R.). See, generally, Foster and Magnet, "The Law of Forcible Entry" (1977), 15 Alberta L. Rev. 271.

[8] Leigh, *supra*, note 6, at 172 (footnote reference omitted). At common law, whether a right of forcible entry was permitted depended on whether the offence was classified as a felony or as a misdemeanour. In the case of a private citizen, a forcible entry to prevent commission of a felony would appear justified: see *Handcock v. Baker* (1800),

treatment should, in this context, be afforded to state officials, and refused to recognize the existence of a general defence of state necessity that would prevail over individual rights.[9]

2. SOME FEATURES OF STATUTORY POWERS OF ENTRY

The advent of modern government regulation of commercial and other activity has caused the enactment of express statutory powers of entry.[10] The number and diversity of the legislative provisions prevents us from discussing each of the relevant statutory powers.[11] We wish, however, to describe, in general terms, important features of the powers of entry that exist in Ontario.

(a) Implied Powers

Where an express power, such as the power to search, occupy, or perform work, is conferred on public officials, a power of entry on land may be implied. In Ontario, this would appear to follow from section 27(*b*) of the *Interpretation Act*.[12] In *R. v. Dedman*,[13] the accused motorist, who had

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2 Bos. & P. 260, 126 E.R. 1270 (C.P.). However, an entry to prevent commission of a misdemeanour would constitute a trespass: see *Rockwell v. Murray* (1850), 6 U.C.Q.B. 412.

[9] Responding to a plea of state necessity, Lord Camden L.C.J. commented in *Entick v. Carrington*, *supra*, note 5, at 1073, as follows:

> It is then said, that it is necessary for the ends of government to lodge such a power [search and seizure under a warrant of the Secretary of State] with a state officer . . . . With respect to the argument of state necessity, or a distinction that has been aimed at between state offences and others, the common law does not understand that kind of reasoning, nor do our books take notice of any such distinctions.

[10] It is necessary to examine not only the powers granted, but also the resources allocated to enforcing them. We have no way of judging whether the enforcement resources are plentiful or scarce, but it could well be that one of the reasons why vast legislative enforcement powers have less impact than might otherwise be expected is that no commensurate degree of enforcement personnel is allocated to the task. For example, during interviews conducted for the Commission (see *infra*, ch. 3), we were informed that only two investigators check for impropriety in the dealings of the registrants of the Financial Institutions Division of the Ministry of Consumer and Commercial Relations (as opposed to 21 who check on incompetence).

[11] A list of the legislative powers of entry is annexed to this Report as Appendix 2.

[12] R.S.O. 1980, c. 219. Section 27(*b*) provides as follows:

> 27. In every Act, unless the contrary intention appears,
>
> . . . .
>
> (*b*) where power is given to a person, officer or functionary to do or to enforce the doing of an act or thing, all such powers shall be understood to be also given as are necessary to enable the person, officer or functionary to do or enforce the doing of the act or thing; . . .

[13] *R. v. Dedman* (1981), 32 O.R. (2d) 641, 122 D.L.R. (3d) 655 (C.A.) (subsequent reference is to 32 O.R. (2d)). Leave to appeal to the Supreme Court of Canada was granted on October 19, 1981. But see *Colet v. The Queen*, *supra*, note 7. While it may be argued that *Colet v. The Queen* is authority to the effect that the existence of powers of entry may not be implied from other statutory powers, we do not believe that this is so. In *Colet*, police officers attempted to *search* an accused's dwelling for firearms pursuant to a warrant issued under s. 105(1) of the *Criminal Code*, *supra*, note 2, that authorized them to *seize* firearms. When the police attempted to execute

been stopped by a police officer who was participating in the R.I.D.E. programme to detect impaired drivers, failed to provide an adequate breath sample and was charged under section 234.1 of the *Criminal Code*.[14] At trial, the accused was acquitted. An appeal by the Crown by way of stated case was dismissed. A further appeal by the Crown to the Court of Appeal was allowed. One of the arguments that was advanced on behalf of the accused was that the power of a police officer under section 14 of the Ontario *Highway Traffic Act*[15] to demand production by the driver of his licence did not confer a power to stop a vehicle. Since it had been found that the accused had voluntarily complied with a signal by the police officer to stop, Martin J.A., who delivered the judgment of the Court of Appeal, did not need to decide the issue. However, he addressed the question with the following remarks:[16]

> In any event, the proposition that such an ancillary power, exercisable in proper circumstances, exists commends itself to me. There is statutory authority for the existence of implied or ancillary powers. Both the *Interpretation Act*, R.S.O. 1970, c. 225, s. 27(*b*), and the *Interpretation Act*, R.S.C. 1970, c. I-23, s. 26(2), provide that where a power is given to a person, officer or functionary to do or enforce the doing of any act or thing, all such powers shall be understood or deemed to be also given as are necessary to enable such a person to do or enforce the doing of the act or thing.

On this reasoning, where an entry on land is necessary to the effective performance of another statutory power, its existence will be implied.

(b) Use of Force

As we have discussed, statutory powers of entry can be characterized

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the warrant, the appellant vigorously defended his property, and he was charged, *inter alia*, with attempted murder. The accused was acquitted. The Supreme Court of Canada held that the police officers had acted without authority in attempting to enter and search the property and therefore were trespassers. Ritchie J., who delivered the judgment of the Court, refused to construe s. 26(2) of the *Interpretation Act*, R.S.C. 1970, c. I-23 (which is similar to s. 27(*b*) of the Ontario *Interpretation Act, supra*, note 12) to imply a power of search from a power of seizure. He stated the following (at 10):

> As I have indicated, I am of opinion that any statutory provision authorizing police officers to invade the property of others without invitation or permission would be an encroachment on the common law rights of the property owner and in case of any ambiguity would be subject to a strict construction in favour of the common law rights of the owner. . . . It appears to me to follow that any provision authorizing police officers to search and enter private property must be phrased in express terms and the provisions of the *Interpretation Act* are not to be considered as clothing police officers by implication with authority to search when s. 105(1) and the warrant issued pursuant thereto are limited to seizure. The extensive number of sections of the *Criminal Code* to which reference was made by the trial Judge and which expressly include the dual authority 'to search' and 'to seize' are enough in themselves to indicate that the deeming provisions of s. 26(2) of the *Interpretation Act* are not applicable to the circumstances.

In Ontario legislation, no distinction generally appears to be drawn between entry, search, seizure, and inspection in particular statutes. Nor are warrants generally required for particular kinds of intrusive activity.

[14] *Criminal Code*, *supra*, note 2, s. 234.1, as enacted by S.C. 1974-75-76, c. 93, s. 15.

[15] R.S.O. 1970, c. 202. See, now, *Highway Traffic Act*, R.S.O. 1980, c. 198, s. 19.

[16] *R. v. Dedman*, *supra*, note 13, at 650.

as justifications or defences for conduct that, at common law, would expose the actor to liability.[17] It would appear, however, that powers of entry do more than simply provide a defence to the tort of trespass to land. Although there is, apparently, an absence of authority in Ontario precisely on this issue, conferral of a power to enter premises would seem to grant authority to use appropriate force to effect entry in the event of recalcitrance on the part of the occupier.[18] This proposition may be supported by section 27(*b*) of the *Interpretation Act*.[19] Indeed, if the position were otherwise, an entry could be effected only with the consent of the occupier, and "in such a case no statutory authorization would be required".[20] Further, the *Trespass to Property Act*[21] excuses an unconsented entry on property by a person acting under right or authority conferred by law.[22]

While it would appear that statutory powers of entry authorize the exercise of force, there are limitations on its use. It seems clear that only force that is reasonably necessary may be exerted to effect an entry.[23] Moreover, it can be argued that, where a statute specifically authorizes the employment of limited force, only that degree of force may be exercised and no general use of force is sanctioned; for example, the *Game and Fish Act*[24] authorizes an officer, without a search warrant, to break any lock or fastening in order to examine any documents relating to game or fish. However, express provisions of this nature appear only in a few statutes.

A further constraint on the exercise of statutory powers of entry arises

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[17] *Wilde v. Rausch*, [1947] 1 W.W.R. 865 (Man. K.B.), at 875, aff'd (1947), 55 Man. R. 369, [1947] 2 W.W.R. 720 (C.A.). Legislative powers to interfere with chattels, whether by inspection or seizure, have a similar purpose.

[18] In *Grove v. Eastern Gas Board*, [1952] 1 K.B. 77, at 82, [1951] 2 All E.R. 1051, at 1053 (C.A.), Somervell L.J., interpreting the powers of entry conferred by the *Gas Act, 1948*, 11 & 12 Geo. 6, c. 67 (U.K.), stated that a statutory power of entry, *prima facie*, is a power of forcible entry. His reasoning was as follows:

> There would be no need for statutory authorization if all that the representatives of the gas board were allowed to do was to enter and read the meter if the consumer was willing to admit them to the place where the meter was, so that they could read it. Therefore, prima facie, I would have said that para. 34 [which conferred the power of entry in issue] imposes a power of forcible entry, and that prima facie construction is, I think, strongly reinforced by para. 36 [which imposed a duty to leave the premises secure].

Hodson L.J. and Jenkins L.J. agreed that forcible entry was contemplated under the *Gas Act, 1948*, but did not articulate a broad principle in support of this conclusion. Subsequently, Parliament enacted the *Rights of Entry (Gas and Electricity Boards) Act, 1954*, 2 & 3 Eliz. 2, c. 21 (U.K.), which reversed the effect of this decision by providing that, except in a case of emergency, entry could not be made without the consent of the occupier, or pursuant to a warrant issued by a justice of the peace (s. 1(1)). See, also, *Fowler v. Taylor*, [1957] V.R. 593 (S.C.), and *Egg Marketing Board (N.S.W.) v. Cassar*, [1978] 1 N.S.W.L.R. 90 (S.C.), which adopted the reasoning of Somervell L.J.

[19] Reproduced *supra*, note 12.

[20] *Fowler v. Taylor*, *supra*, note 18, at 596. See, also, *Egg Marketing Board (N.S.W.) v. Cassar*, *supra*, note 18.

[21] R.S.O. 1980, c. 511.

[22] *Ibid.*, s. 2.

[23] *Fowler v. Taylor*, *supra*, note 18, at 596-97.

[24] R.S.O. 1980, c. 182, s. 15.

from the medieval doctrine of trespass *ab initio*.[25] According to this doctrine, a person who enters land pursuant to legal authority, and abuses or exceeds his mandate, becomes a trespasser from the time of his entry (or "*ab initio*"), although the entry, when made, did not constitute a trespass. This doctrine encourages recipients of powers of entry to ensure that their interference with individual rights conforms strictly to the relevant statute.

(c) FREQUENCY

In studying the legislative framework respecting powers of entry, it is clear that these powers have been conferred frequently.[26] Express authority to enter land or premises, without a warrant, is granted in 223 public statutes, 61 private statutes, 86 regulations, and numerous by-laws. Certain statutes and regulations include more than one power of entry; as a result, it will be noted that the total number of these powers, 566, exceeds the total number of statutes, regulations, and by-laws. When the number of implied powers of entry is added to the express powers, there are 1359 powers of entry, of which 1016 are to be found in the public statutes.

The number of occurrences of express and implied powers of entry appears in Table 1.

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[25] This doctrine was criticized by Lord Denning M.R. by way of *obiter* in *Chic Fashions (West Wales) Ltd. v. Jones*, [1968] 2 Q.B. 299, at 313, [1968] 2 W.L.R. 201, at 210, [1968] 1 All E.R. 229, at 236 (C.A.). He stated that trespass *ab initio* was "a by-product of the old forms of action. Now that they are buried, it can be interred with their bones". See Fleming, *The Law of Torts* (5th ed., 1977), at 101. The doctrine, however, has not been abolished. For a Canadian commentator who regards the doctrine as some assurance that government powers of entry will be exercised in a limited fashion, see Magnet, "Intentional Interference with Land", in Klar (ed.), *Studies in Canadian Tort Law* (1977) 287, at 303-04.

[26] The Research Directors conducted a study of the 1980 Revised Statutes of Ontario, the private Acts of the Legislative Assembly of Ontario dating from 1933, and the Revised Regulations of Ontario, in order to ascertain the nature of powers of entry conferred in Ontario. Each power of entry was analyzed according to various criteria: the type of power, the category or purpose for which it had been conferred, a description of the power, whether its exercise was subject to certain conditions or controls, the recipient of the power, whether the exercise of the power was supervised, and the nature of the supervision. Summary analyses of the powers were compiled and are contained in a two volume Appendix entitled "Legislative Powers of Entry in Ontario", which has been distributed to, and is available for inspection at, the libraries listed in Appendix 6.

For purposes of this Report, a list of the legislative powers of entry, summarized from the two volumes, has been annexed to the Report as Appendix 2. In addition, for purposes of discussion, relevant information is presented in several Tables in this chapter, which have been derived from the data contained in the two volume Appendix.

Finally, we would note that the analysis of each power of entry according to the criteria set out above was an inherently subjective process, particularly the classification of the types of power and the purpose of the power. Given that the statistical information in the Tables contained in this chapter was based upon such a process, the resulting numbers should be regarded as approximations, rather than assertions of numerical certainty.

TABLE 1

Number of Occurrences of Express and Implied Powers of Entry

	Public Statutes	*Private Acts*	*Regulations*	*Total*
Entry	431	82	53	566
Inspect	231	31	58	320
Search	39	0	0	39
Seize	51	0	6	57
Destroy or Demolish	13	14	0	27
Access	107	0	28	135
Survey	4	0	0	4
Occupy	12	0	0	12
Levy Distress	1	2	0	3
Repair	4	7	0	11
Compel Shutdown	5	1	0	6
Conduct Vote	2	0	0	2
Perform Work	61	39	1	101
Interrogate	4	0	0	4
Remove (Person or Property)	23	1	0	24
Take Control of Assets	3	0	0	3
Disconnect Power	1	0	0	1
Apprehend	1	0	0	1
Expropriate	22	14	0	36
Conduct Tests	1	0	5	6
Visit	0	0	1	1
Total:	1016	191	152	1359

(d) Purposes

The purposes for which powers of entry have been conferred are set out in Table 2.[27]

TABLE 2

Occurrences of Powers of Entry, Categorized by Purpose

Purpose	*Public Statutes*	*Private Acts*	*Regulations*	*Total*
General Administration	115	56	65	236
Health	55	8	23	86
Safety	48	6	4	58
Planning and Environment	39	4	2	45
Revenue	18	0	0	18
Quasi-Criminal	14	0	0	14
Human Rights	11	0	1	12
Total:	300	74	95	469

As is apparent, powers of entry have been conferred for a variety of purposes that cover a wide range of government activity.

(e) Controls

A survey of the legislative provisions reveals that relatively few controls have been imposed, either on the decision to make an entry or on the manner in which entry is to be effected. Some relevant data is contained in Table 3.

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[27] Powers of entry given more than once in the same statute or regulation for the same purpose are counted as a single power in this Table. This accounts for the fact that there are fewer powers listed in Table 2 than in Table 1.

TABLE 3

Number of Occurrences of Limitations or Controls on Express and Implied Powers of Entry

	Public Statutes	*Private Acts*	*Regulations*	*Total*
Action Initiated by Other than User of Power	196	32	51	279
Time Restrictions	70	12	39	121
Supervision	70	23	7	100
Notice — Prior	61	22	5	88
— After	4	0	0	4
Show Identification	16	5	1	22
Express Sanction for Use[28]	16	5	0	21
Place Restrictions	326	54	82	462
Express Appeal	10	21	0	31
Express Emergency Provision	10	4	0	14
Total:	779	178	185	1142
Total Number of Provisions From Table 1	1016	191	152	1359

In relation to the decision to make an entry, it will be noted that only approximately one-fifth (196) of all the powers conferred by the public statutes of Ontario limit the circumstances in which an entry may be made by requiring something more than a simple, discretionary decision on the part of the public official to whom the power has been given. Relatively few statutes, for example, require a warrant[29] or prior judicial authorization in the form of a court order.[30]

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[28] This sanction involves the paying of compensation for taking or occupying property.

[29] These statutes include: *Beach Protection Act*, R.S.O. 1980, c. 39, s. 8(1); *Child Welfare Act*, R.S.O. 1980, c. 66, s. 22(3); *Children's Residential Services Act*, R.S.O. 1980, c. 71, s. 13(1); *Provincial Courts Act*, R.S.O. 1980, c. 398, s. 29(5); *Provincial Offences Act*, R.S.O. 1980, c. 400, s. 142(1); *Public Inquiries Act*, R.S.O. 1980, c. 411, s. 17(2); *Public Lands Act*, R.S.O. 1980, c. 413, s. 23(3); *Small Claims Courts Act*, R.S.O. 1980, c. 476, s. 137(1) and (2); and *Training Schools Act*, R.S.O. 1980, c. 508, s. 19(4).

The following incorporate by reference the search warrant section of the *Provincial Offences Act*, R.S.O. 1980, c. 400, s. 142: *Animals for Research Act*, R.S.O. 1980, c. 22, s. 18(4); *Dead Animal Disposal Act*, R.S.O. 1980, c. 112, s. 15(4); *Elevating Devices Act*, R.S.O. 1980, c. 135, s. 6(3); *Employment Standards Act*, R.S.O. 1980, c. 137, s. 45(2); *Energy Act*, R.S.O. 1980, c. 139, s. 4(2); *Forest Fires Prevention Act*, R.S.O. 1980, c. 173, s. 5(2); *Fur Farms Act*, R.S.O. 1980, c. 181, s. 8(4); *Live Stock and Live Stock Products Act*, R.S.O. 1980, c. 245, s. 11(4); *Live Stock Community Sales Act*, R.S.O. 1980, c. 247, s. 17(4); *Live Stock Medicines Act*, R.S.O. 1980, c. 248, s. 3(6); *Meat Inspection Act (Ontario)*, R.S.O. 1980, c. 260, s. 11(4); *Municipal Act*, R.S.O. 1980, c. 302, s. 236(4); *Occupational Health and Safety Act*, R.S.O. 1980, c. 321, s. 28(2); *Petroleum Resources Act*, R.S.O. 1980, c. 377, s. 3(2); *Planning Act*, R.S.O. 1980, c. 379, s. 43(5); *Plant Diseases Act*, R.S.O. 1980, c. 380, s. 13(2); and *Tourism Act*, R.S.O. 1980, c. 507, s. 13(3).

[30] The statutes include: *Business Practices Act*, R.S.O. 1980, c. 55, s. 11(4); *Collection Agencies Act*, R.S.O. 1980, c. 73, s. 16(4); *Consumer Reporting Act*, R.S.O. 1980, c. 89, s. 17(4); *Corporations Tax Act*, R.S.O. 1980, c. 97, s. 86(4); *Denture Therapists Act*, R.S.O. 1980, c. 115, s. 22(4); *Deposits Regulation Act*, R.S.O. 1980, c. 116, s. 5(8); *Environmental Assessment Act*, R.S.O. 1980, c. 140, s. 25(2); *Environmental*

Turning to the manner in which entry is to be effected, a substantial discretion has been left to public officials; relatively few restrictions have been imposed. Of 1016 powers contained in the public statutes, only seventy are subject to limitations respecting the time at which entry may be made, providing either that it should be during the day[31] or at reasonable times. In equally few cases (seventy) does the statutory provision expressly refer to the supervision of the exercise of the power. Prior notice of the entry is demanded in eighty-eight provisions. Only twenty-two legislative provisions require the entrant to present identification on making an entry.[32] No provision stipulates for sanctions in the event of an abuse of a power of entry, either by establishing an administrative mechanism for redress or by creating a right in the form of a civil action for damages.[33]

In concluding our discussion of statutory controls, one final point deserves mention. As Table 3 indicates, about one-third (326) of the provisions in the public statutes limit the type of premises to which entry can be made. In particular, it should be observed that, in Ontario, entry into dwellings is subject to more stringent controls than entry on other kinds of premises. Not infrequently, where, as a general rule, a statute permits en-

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Protection Act, R.S.O. 1980, c. 141, s. 127(2); *Funeral Services Act*, R.S.O. 1980, c. 180, s. 31(8); *Gasoline Tax Act*, R.S.O. 1980, c. 186, s. 16(4); *Health Disciplines Act*, R.S.O. 1980, c. 196, ss. 40(4), 64(4), 108(4), and 133(4); *Income Tax Act*, R.S.O. 1980, c. 213, s. 38(3); *Liquor Licence Act*, R.S.O. 1980, c. 244, s. 21(4); *Mortgage Brokers Act*, R.S.O. 1980, c. 295, s. 24(4); *Motor Vehicle Dealers Act*, R.S.O. 1980, c. 299, s. 13(4); *Motor Vehicle Fuel Tax Act*, R.S.O. 1980, c. 300, s. 21(3); *Nursing Homes Act*, R.S.O. 1980, c. 320, s. 11; *Paperback and Periodical Distributors Act*, R.S.O. 1980, c. 366, s. 11(4); *Pesticides Act*, R.S.O. 1980, c. 376, ss. 17(3) and 18; *Public Commercial Vehicles Act*, R.S.O. 1980, c. 407, s. 33(5); *Public Health Act*, R.S.O. 1980, c. 409, s. 4(2); *Real Estate and Business Brokers Act*, R.S.O. 1980, c. 431, s. 15(4); *Registered Insurance Brokers Act*, R.S.O. 1980, c. 444, s. 25(5); *Replevin Act*, R.S.O. 1980, c. 449, s. 5; *Retail Sales Tax Act*, R.S.O. 1980, c. 454, s. 29(4); *Tobacco Tax Act*, R.S.O. 1980, c. 502, s. 14(3); *Travel Industry Act*, R.S.O. 1980, c. 509, s. 20(4); and *Workmen's Compensation Act*, R.S.O. 1980, c. 539, s. 99(2).

[31] Various statutes require entry to be effected "between sunrise and sunset", including the following: *Agricultural Tile Drainage Installation Act*, R.S.O. 1980, c. 15, s. 11(2); *Animals for Research Act*, R.S.O. 1980, c. 22, s. 18(5); *Business Practices Act*, R.S.O. 1980, c. 55, s. 11(4); *Deposits Regulation Act*, R.S.O. 1980, c. 116, s. 5(8); *Environmental Assessment Act*, R.S.O. 1980, c. 140, s. 25(2); *Forest Tree Pest Control Act*, R.S.O. 1980, c. 174, s. 3; *Liquor Licence Act*, R.S.O. 1980, c. 244, s. 21(4); *Mortgage Brokers Act*, R.S.O. 1980, c. 295, s. 24(4); *Pesticides Act*, R.S.O. 1980, c. 376, s. 17(3); *Plant Diseases Act*, R.S.O. 1980, c. 380, s. 13(1); *Public Commercial Vehicles Act*, R.S.O. 1980, c. 407, s. 33(5); *Real Estate and Business Brokers Act*, R.S.O. 1980, c. 431, s. 15(4); *Registered Insurance Brokers Act*, R.S.O. 1980, c. 444, s. 25(5); *Riding Horse Establishments Act*, R.S.O. 1980, c. 455, s. 10(4); *Travel Industry Act*, R.S.O. 1980, c. 509, s. 20(4); and *Weed Control Act*, R.S.O. 1980, c. 530, s. 10.

[32] See, for example, *Animals for Research Act*, R.S.O. 1980, c. 22, s. 18(3); *Apprenticeship and Tradesmen's Qualification Act*, R.S.O. 1980, c. 24, s. 7(1)(*a*); *Elevating Devices Act*, R.S.O. 1980, c. 135, s. 3(3); *Freshwater Fish Marketing Act (Ontario)*, R.S.O. 1980, c. 178, s. 5(2); *Grain Elevator Storage Act*, R.S.O. 1980, c. 191, s. 6(3); *Live Stock Medicines Act*, R.S.O. 1980, c. 248, s. 3(7); *Petroleum Resources Act*, R.S.O. 1980, c. 377, s. 2(4); and *Public Health Act*, R.S.O. 1980, c. 409, s. 70(2).

[33] The failure to provide expressly for the creation of civil liability in the event of abusive conduct probably reflects the fact that an action for trespass is available at common law.

try without a warrant or other form of prior judicial authorization, a requirement of this nature is imposed in the case of a dwelling, where the occupier does not consent.[34] The distinction that has been drawn between dwellings and other premises reflects the recommendations of the McRuer Commission.[35] Following the Report of that Commission, several statutes that had conferred unencumbered powers of entry were amended by providing that entry into a dwelling could not be made without the consent of the occupier, except under the authority of a warrant.[36] Statutes that were enacted subsequently continue to distinguish dwellings from other premises.[37] While the legislation does reveal a greater solicitude for dwellings than for other private property interests, it must be understood that many statutes nonetheless do countenance entry on land, including dwellings, without prior judicial intervention.

3. *CANADIAN CHARTER OF RIGHTS AND FREEDOMS*

The *Canadian Charter of Rights and Freedoms*[38] applies to both provincial and federal legislation.[39] The provision of the Charter that has the most significance for our discussion of powers of entry is section 8. However, before proceeding to consider this provision, we think it necessary to advert briefly to section 7, which provides as follows:

> 7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

It will be noted that the section refers only to the right to "security of the person", and contains no reference to "property".[40] It would appear,

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[34] See, for example, *Dead Animal Disposal Act*, R.S.O. 1980, c. 112, s. 15; *Meat Inspection Act (Ontario)*, R.S.O. 1980, c. 260, s. 11; *Planning Act*, R.S.O. 1980, c. 379, s. 43(5).

[35] See *infra*, ch. 4, at 25-28.

[36] *The Civil Rights Statute Law Amendment Act, 1971*, S.O. 1971, Vol. 2, c. 50, ss. 26(5), 31(4), 52(4), 53(3), 56(5), and 67(5). This Act afforded greater protection to dwellings by another technique: statutes that provided that a power of entry or inspection was exercisable in relation to "business premises" were amended by the incorporation of a definition of "business premises" that specifically stipulated that this expression did not include a dwelling. The term "dwelling", in turn, was defined to mean "any premises or any part thereof occupied as living accommodation": see *The Civil Rights Statute Law Amendment Act, 1971*, S.O. 1971, Vol. 2, c. 50, ss. 10(1), 21(1), 23(1), 32(1), 59(1), 76(1), 84(1), and 85(1).

[37] See, for example, *The Fur Farms Act*, S.O. 1971, Vol. 2, c. 29, s. 8; *The Petroleum Resources Act, 1971*, S.O. 1971, c. 94, s. 3; *The Employment Standards Act, 1974*, S.O. 1974, c. 112, s. 45; *The Business Practices Act, 1974*, S.O. 1974, c. 131, ss. 1(*a*) and 11; *The Occupational Health and Safety Act, 1978*, S.O. 1978, c. 83, s. 28(2); and *The Elevating Devices Act, 1980*, S.O. 1980, c. 9, s. 6.

[38] The *Canadian Charter of Rights and Freedoms* constitutes Part I of the *Constitution Act, 1982*, which itself is scheduled to the *Canada Act 1982*, c. 11 (U.K.), a statute of the Parliament of the United Kingdom and Northern Ireland, which was proclaimed in force as law in Canada by Her Majesty Queen Elizabeth II at Ottawa, on April 17, 1982.

[39] *Canadian Charter of Rights and Freedoms*, s. 32.

[40] A proposal that would have amended s. 7 to read "Everyone has the right to life, liberty, security of the person and enjoyment of property . . ." was defeated in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada on January 27, 1981, and in the House of Commons on April 23, 1981.

therefore, that section 7 has no application to an interference with either land or chattels that flows from the exercise of a power of entry.[41]

Whatever doubts may exist concerning the construction of section 7 of the Charter, the application of section 8 to the exercise of powers of entry seems more certain. Section 8 provides as follows:

> 8. Everyone has the right to be secure against unreasonable search or seizure.

As background to our discussion of section 8, it may be helpful to review briefly the search and seizure provision of the American Bill of Rights.

(a) Fourth Amendment

The search and seizure provision of the Bill of Rights – the Fourth Amendment – differs substantially from section 8 of the Charter. It provides as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

In the United States, the Fourth Amendment has generated voluminous jurisprudence and much commentary.[42] In analyzing this provision, American courts appear to have rejected a narrow, literal interpretative approach. Indeed, the United States Supreme Court has ascribed to it a broad purpose: "to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials".[43]

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[41] But see *The Queen in Right of New Brunswick v. Fisherman's Wharf Ltd.* (1982), 40 N.B.R. (2d) 42, at 53, 135 D.L.R. (3d) 307, at 315-16 (Q.B.), aff'd for other reasons *sub nom. The Queen in Right of New Brunswick v. Estabrooks*, unreported (December 31, 1982, N.B.C.A.), where Dickson J. stated as follows:

> The *Canadian Charter of Rights and Freedoms*, while purporting by reason of s. 26 thereof to be somewhat less than exclusive in the guarantee of rights and freedoms of Canadians, nevertheless purports to be fairly all-embracing in respect of those rights and freedoms to which all Canadians have been accustomed, whether under that portion of our Constitution which has heretofore been written or under that portion which has heretofore been unwritten. The Charter is silent in specific reference to property rights. In that circumstance it can only be assumed, in my view, that the expression 'right to . . . security of the person' as used in s. 7 must be construed as comprising the right to enjoyment of the ownership of property which extends to 'security of the person' and that in consequence the further words of s. 7, viz., 'and the right not to be deprived thereof except in accordance with the principles of fundamental justice' must extend to the right not to be deprived of property rights which tend to extend to the security of the person.

See, also, *Elliott v. Director of Social Services (Winnipeg Central)*, unreported (August 4, 1982, Man. C.A.).

[42] See, generally, LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* (1978).

[43] *Camara v. Municipal Court*, 387 U.S. 523 (1967), at 528. In accordance with this expansive view of the purpose of the Fourth Amendment, certain activity has been held

Initially, in construing the Fourth Amendment, attention was focused on its application in the criminal law context, and, when the United States Supreme Court first considered the subject of "administrative searches", it held that they were not subject to the Fourth Amendment.[44] The Court was of the view that, in light of its history, the Fourth Amendment was not intended to apply to search and seizure outside the criminal law context. In subsequent cases, the Court reversed its position, holding that administrative searches of dwellings[45] and commercial premises[46] were governed by the search and seizure provision.[47] Further, American courts have refused to draw a distinction between inspections and searches, notwithstanding the different nature of these activities,[48] and have held that mere entry on land constitutes a search.[49]

Unlike the position under section 8 of the *Canadian Charter of Rights and Freedoms*, the Fourth Amendment links the right to be secure against unreasonable search and seizure to the requirement of a search warrant, issued upon probable cause. It appears that, under the Fourth Amendment, as a general rule, administrative searches can be conducted only after a warrant has been issued.[50] As with search and seizure in the crimi-

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to constitute searches within the meaning of the Fourth Amendment that, on a more literal interpretation, might be otherwise characterized. For example, the United States Supreme Court has held electronic surveillance by means of "bugging" conversations to be a "search" within the meaning of the Fourth Amendment: see *Berger v. New York*, 388 U.S. 41 (1967), and *Katz v. United States*, 389 U.S. 347 (1967).

[44] *Frank v. Maryland*, 359 U.S. 360 (1959).

[45] *Camara v. Municipal Court*, *supra*, note 43.

[46] *See v. City of Seattle*, 387 U.S. 541 (1967).

[47] For a discussion of so-called "administrative search", see, for example, Lacek, "*Camara*, *See*, and Their Progeny: Another Look at Administrative Inspections under the Fourth Amendment" (1979), 15 Colum. J.L. & Soc. Prob. 61; Comment, "The Fourth Amendment and Administrative Inspections" (1979), 16 Houston L. Rev. 399; Note, "Administrative Inspections and the Fourth Amendment" (1973), 12 Washburn L.J. 203; Rothstein and Rothstein, "Administrative Searches and Seizures: What Happened to *Camara* and *See*?" (1975), 50 Wash. L. Rev. 341; Note, "Rationalizing Administrative Searches" (1979), 77 Mich. L. Rev. 1291; and McManis and McManis, "Structuring Administrative Inspections: Is there any warrant for a search warrant?" (1977), 26 Am. U. L. Rev. 942.

[48] In the several decisions of the United States Supreme Court dealing with administrative inspections (see *infra*, note 50), apparently it had been assumed that inspections did constitute searches within the meaning of the Fourth Amendment. This was articulated expressly in the dissenting reasons of Stewart J. in *Donovan v. Dewey*, 101 S.Ct. 2534 (1981), at 2543. In *District of Columbia v. Little*, 178 F.2d 13 (D.C. Cir. 1949), at 18, Countryman J. refused to draw a distinction between a search and an inspection in the following passage:

> Distinction between 'inspection' and 'search' of a home has no basis in semantics, in constitutional history, or in reason. 'Inspect' means to look at, and 'search' means to look for. To say that the people, in requiring adoption of the Fourth Amendment, meant to restrict invasion of their homes if government officials were looking for something, but not to restrict it if the officials were merely looking, is to ascribe to the electorate of that day and to the several legislatures and the Congress a degree of irrationality not otherwise observable in their dealings with potential tyranny.

[49] *U.S. v. Consolidation Coal Co.*, 560 F.2d 214 (6th Cir. 1977), at 219, vacated and remanded 436 U.S. 942, judgment reinstated 579 F.2d 1011 (6th Cir. 1978), *cert.* denied 439 U.S. 1069 (1979), and *U.S. v. Blue Diamond Coal Co.*, 667 F.2d 510 (6th Cir. 1981), at 517-18.

[50] *Camara v. Municipal Court*, *supra*, note 43; *See v. City of Seattle*, *supra*, note 46;

nal context,[51] there are exceptions to the general rule, in which case inspection can be effected without a warrant: for example, in the case of emergency or "exigent circumstances", a warrant need not be obtained. More significant are the exceptions that have been developed for businesses that have been "long subject to close supervision and inspection"[52] or "pervasively regulated",[53] where the regulated individual cannot be considered to have a reasonable expectation of privacy. Recent cases indicate that the boundaries of these exceptions have yet to be clearly established by the United States Supreme Court.[54]

It is worthy of note that, in the United States, where the Supreme Court has held that a warrant must precede an administrative inspection, it has declared that the issuance of the warrant is to be governed by a standard different from that which applies in the case of a criminal investigation. In the case of the latter, for a search warrant to be issued, the magistrate must be persuaded that there is "probable cause" for the search, which requires, *inter alia*, evidence that the items sought are connected with criminal activity.[55] For administrative inspections, the Supreme Court has stated that "probable cause" does not require specific evidence of an existing violation, but is present "if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular [premises]".[56] In modifying the standard for administrative inspections, the United States Supreme Court appears to be attempting to soften the strictures of the warrant requirement in order to take account of the practical considerations that underlay the giving of inspection powers to government officials in the first place. It may also reflect a belief that imposing the criminal standard of "probable cause" may impede inspections that would be in the public interest, insofar as the purpose of an inspection may be to ascertain compliance with prescribed standards, rather than to investigate an anticipated breach of the law.

(b) Section 8 of the Charter

Section 8 of the Charter provides that everyone has the right to be secure against unreasonable "search or seizure".[57] The phrase "search or seizure" is not defined in the Charter, and, in the context of our Report, two issues arise concerning its construction. First, does "search or seizure" comprehend both the initial entry and the subsequent conduct and, sec-

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Colonnade Catering Corp. v. United States, 397 U.S. 72 (1970); *United States v. Biswell*, 406 U.S. 311 (1972); *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978); and *Donovan v. Dewey*, 452 U.S. 594 (1981).

[51] Under the Fourth Amendment, there are several types of exception to the warrant requirement in the context of criminal search: see, generally, Dambrot, "Section 8 of the Canadian Charter of Rights and Freedoms" (1982), 26 C.R. (3d) 97, and Ewaschuk, "Search and Seizure: Charter Implications" (1982), 28 C.R. (3d) 153.

[52] *Colonnade Catering Corp. v. United States*, *supra*, note 50.

[53] *United States v. Biswell*, *supra*, note 50.

[54] See *Marshall v. Barlow's, Inc.*, *supra*, note 50, and *Donovan v. Dewey*, *supra*, note 50.

[55] See Lafave, *supra*, note 42, Vol. 3, §10.1(b), at 184.

[56] *Camara v. Municipal Court*, *supra*, note 43, at 538.

[57] See, generally, Ewaschuk, *supra*, note 51.

ondly, does an inspection or other similar activity constitute a "search or seizure"?

Turning to the first issue, as we have pointed out, powers of entry do not exist in a vacuum, but are inevitably conferred to permit the exercise of other associated powers. While it is possible to contend that an entry does not constitute a "search or seizure", we prefer to view the matter on a functional basis and to regard an entry as an integral component of the associated power to which it relates. Where the associated power is a power of search or seizure, it would be odd, in our view, to hold that the Charter has not been infringed where the entry itself was conducted in an unreasonable manner, but the power of search or seizure was exercised reasonably. In such a case, we therefore conclude that section 8 would apply to the initial entry.

With respect to the second issue, we note that an entry on land may be effected for many purposes apart from search or seizure; for example, legislation may confer power to inspect premises to ascertain compliance with regulatory standards. An inspection of this nature may be said to involve conduct very different in character from a search of premises, which is activity directed to finding or discovering a particular object or thing. Nevertheless, should the courts impute to section 8 a broad purpose,[58] analogous to that ascribed to the Fourth Amendment by the United States Supreme Court,[59] it may well be that the section would be construed to comprehend inspections and like activity.

Assuming that section 8 applies, it should be noted that it protects only against "unreasonable" search or seizure. Whether the conduct in question is unreasonable will be a matter for the court to decide, having regard to the particular facts of the case.[60] The Fourth Amendment, it will be recalled, links the right to be secure against unreasonable search and seizure to the requirement of a search warrant. However, unlike the Fourth Amendment, section 8 contains no reference to a warrant, and we consider it most unlikely that the courts would read into the language a requirement of a warrant in all cases.

The right to be secure against unreasonable search or seizure, like the other rights and freedoms declared by the *Canadian Charter of Rights and Freedoms*, is not absolute. Rather, the rights and freedoms that are enunciated in the Charter are qualified insofar as, pursuant to section 1, they are guaranteed "subject only to such reasonable limits prescribed by law

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[58] Certain courts have stated that the Charter is to receive a broad interpretation: *Southam Inc. v. Hunter* (1982), 20 Alta. L.R. (2d) 144, 136 D.L.R. (3d) 133, [1982] 4 W.W.R. 673 (Q.B.); *R. v. Hay (No. 1)* (1982), 38 O.R. (2d) 4 (Dist. Ct.); and *Re Section 12 of the Juvenile Delinquents Act*, unreported (August 27, 1982, Ont. H.C.J.).

[59] See *supra*, notes 43 and 48 and accompanying text.

[60] For a recent discussion of the interpretation of s. 8 in the context of a search conducted pursuant to the *Child Welfare Act*, R.S.O. 1980, c. 66, by the Children's Aid Society of the Regional Municipality of York, see *Re Tamatha L. W.*, unreported (November 24, 1982, Ont. Prov. Ct. (Family Division), Judicial Dist. of York Region).

as can be demonstrably justified in a free and democratic society". Provincial legislation of this character would, therefore, not be inconsistent with the Charter and would not be rendered "of no force and effect".[61] It is also noteworthy that the application of section 8 may be suspended by an Act of the Parliament of Canada or by an Act of the legislature of a province.[62]

If the exercise of a power of entry constitutes an unreasonable search or seizure, the Charter provides a remedy. In the event of an infringement or denial of the rights or freedoms guaranteed by the Charter, application may be made to a court of competent jurisdiction for a remedy that is "appropriate and just in the circumstances".[63] This general language would appear to confer jurisdiction to select among a panoply of remedies, including damages, injunctive and declaratory orders.[64] Where the court concludes that evidence has been obtained in a manner that infringes or denies any of the rights or freedoms guaranteed by the Charter, it may be excluded if it is established that, having regard to all the circumstances, the admission of the evidence will bring the administration of justice into disrepute.[65]

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[61] *Canadian Charter of Rights and Freedoms*, s. 52.

[62] Section 33 of the Charter confers a power to declare expressly that a statute or a particular provision "shall operate notwithstanding a provision in section 2 or sections 7 to 15". A similar power was conferred by the *Canadian Bill of Rights*, 8-9 Eliz. II, c. 44 (Can.). Section 2 allowed Parliament to declare expressly that an Act "shall operate notwithstanding the *Canadian Bill of Rights*". Since the enactment of the *Canadian Bill of Rights* in 1960, this power was invoked by Parliament on only a single occasion, in 1970, during what is known popularly as "the October Crisis": see *Public Order (Temporary Measures) Act, 1970*, S.C. 1970-71-72, c. 2, s. 12(1). The *War Measures Act*, R.S.C. 1970, c. W-2, adopts a different approach. It does not exclude the *Canadian Bill of Rights* by means of a notwithstanding clause. Instead, it provides that "[a]ny act or thing done or authorized or any order or regulation made under the authority of this Act, shall be deemed not to be an abrogation, abridgment or infringement of any right or freedom recognized by the *Canadian Bill of Rights*" (s. 6(5)).

[63] *Canadian Charter of Rights and Freedoms*, s. 24(1).

[64] See Hogg, *Canada Act 1982 Annotated* (1982), at 65.

[65] *Canadian Charter of Rights and Freedoms*, s. 24(2).

CHAPTER 3

THE EXISTING PRACTICE

As we have noted in the preceding chapter, the existing legislative framework confers substantial discretion on government officials to decide whether an entry is to be made and the manner in which entry is to be effected. In view of this, we were of the opinion that our research would be incomplete without a survey of the practice respecting powers of entry.

In order to ascertain how powers of entry are exercised, interviews were conducted with two groups.[1] One group consisted of the recipients of powers of entry.[2] The second group comprised representatives of organizations whose members were subject to the exercise of these powers.[3] We shall describe first the interviews with the former group.

In light of the great number of legislative powers of entry, it was impossible to conduct an exhaustive survey of all persons upon whom these powers were conferred. Consequently, a representative cross-section of government officials was chosen for our study. In the process, we interviewed persons employed directly by all the ministries of the Ontario government responsible for inspections.[4] In addition, we interviewed officials of the Commission on Election Contributions and Expenses and of the Housing and Urban Development Association of Canada, as representatives of independent government bodies and autonomous bodies respectively. At the municipal level, interviews were conducted with building inspectors, as an example of persons employed directly by a municipality, and with officials of the City of Toronto Board of Education and the Food Control and Sanitation Division of the City of Toronto Department of Health, which are municipal special-purpose bodies. By examining the practices of a range of institutions, it was hoped to discover whether there was any correlation between the use of a power of entry and the type of governmental body.

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[1] The interviews were conducted during the fall of 1980. Therefore, the observations and conclusions that are contained herein must be read as being referable to the practice that existed at that time.

[2] See *infra*, Appendix 3.

[3] See *infra*, Appendix 4.

[4] These ministries are the following: Ministry of Agriculture and Food; Ministry of Colleges and Universities; Ministry of Community and Social Services; Ministry of Consumer and Commercial Relations; Ministry of Education; Ministry of Energy; Ministry of the Environment; Ministry of Health; Ministry of Housing (now the Ministry of Municipal Affairs and Housing); Ministry of Intergovernmental Affairs; Ministry of

In the course of each interview, the officials were requested to answer ten questions.[5] These questions were directed to eliciting information respecting four general matters: (1) the current use of the existing power; (2) whether the power was regarded as adequate and appropriate; (3) the anticipated impact of procedural requirements, such as prior notice; and (4) whether there had been complaints concerning abuse of the exercise of the power. These interviews have led us to several conclusions.

First, and perhaps most importantly, the interviews indicated that force is virtually never used to effect entry. All the persons who were interviewed reported that consent to entry is requested always and that it is granted immediately in almost all cases. On the few occasions that consent was not forthcoming, an explanation of the power of entry usually resulted in consent being granted. Only rarely was further action taken by government officials in order to effect entry, either by the exercise of force or by seeking a court order.

A second conclusion that may be drawn is that most, although not all, provincial officials identify themselves when necessary, and carry identification cards that include a photograph and a statement that they are government inspectors for the purposes of a particular legislative provision. Municipal inspectors possess similar identification cards, which indicate that the individuals are inspectors and request the occupier's cooperation. We were informed that whether identification in fact is presented depends on whether it is requested. It appears that where, as under the *Artificial Insemination of Livestock Act*,[6] the regulated industry is small and the inspectors are well known, identification is regarded as unnecessary and is not demanded.

The interviews revealed that there were diverse practices regarding notice of entry. We were informed that, in many cases, such as under the *Day Nurseries Act*,[7] the *Insurance Act*,[8] and the *Loan and Trust Corporations Act*,[9] an appointment is arranged prior to an inspection. In other cases, for example, under the *Environmental Assessment Act*[10] and the *Real Estate and Business Brokers Act*,[11] in order to ensure that proper standards are maintained, inspections are done on a "spot" basis, that is, without prior notification. In yet other cases, as under the *Public Health Act*,[12] where spot checks are attempted and entry is refused, inspectors make an appointment and return later to the premises. Almost all the persons interviewed suggested that the method employed depended on the circumstances, but indicated that no specific form of notice was given.

Labour; Ministry of Revenue; Ministry of the Solicitor General; and Ministry of Transportation and Communications.

[5] See *infra*, Appendix 5.

[6] R.S.O. 1980, c. 29.

[7] R.S.O. 1980, c. 111.

[8] R.S.O. 1980, c. 218.

[9] R.S.O. 1980, c. 249.

[10] R.S.O. 1980, c. 140.

[11] R.S.O. 1980, c. 431.

[12] R.S.O. 1980, c. 409.

In connection with the actual use of legislative powers of entry, we were given to understand that there were few occasions where the power was never exercised. One example that came to our attention was the power of entry contained in the *Venereal Diseases Prevention Act*.[13] Under section 27 of the Act, the medical officer of health, who is appointed under the *Public Health Act*, or a physician designated by him, is given a power to enter "any house, outhouse or premises in the day time for the purpose of making inquiry and examination with respect to the state of the health of any person therein . . .". According to the Health and Diseases Control Section of the Public Health Branch of the Ministry of Health, this power is no longer utilized.

Government officials appear to be satisfied with the present breadth of their powers of entry.[14] The interviews revealed no general desire on their part either to expand or to limit the scope of these powers. Nearly all the officials favoured retention of the powers of entry in their present broad form, which imposes few formalities on their exercise. In support of this position, three reasons were given. First, it was contended that restricting powers of entry by the institution of a warrant requirement, granted on the basis of reasonable grounds to believe that a violation of the particular legislation has been committed,[15] would severely undermine effective regulation. Such a requirement, it was argued, would have deleterious consequences in that it would cause costly time delays during which critical evidence might be lost. Moreover, it was contended that a warrant requirement would oblige government to hire more personnel because the present practice of speedy, informal spot checks would no longer be possible. The second reason that was given for satisfaction with the existing system was that the conferral of broad statutory authority, in itself, was considered to be a factor encouraging consent and cooperation. It was thought that entry often was allowed, where it might otherwise be refused, because the person whose premises were to be entered was either generally aware, or informed by the government official, of the legislative power, and believed that any opposition would be futile. Finally, government officials favoured the present broad powers because they allow flexibility in choosing the time and manner of entry.

It may also be concluded from the interviews that, where there is

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[13] R.S.O. 1980, c. 521.

[14] It appears that, while government officials are generally content with their powers, there is concern about particular powers. These concerns are being addressed within the individual ministries responsible for the exercise of these powers. During the interviews, we were informed that the *Public Health Act*, R.S.O. 1980, c. 409, the *Private Investigators and Security Guards Act*, R.S.O. 1980, c. 390, the *Venereal Diseases Prevention Act*, *supra*, note 13, and the *Ontario Energy Board Act*, R.S.O. 1980, c. 332, were under review. The *Health Protection Act, 1982*, Bill 138, 1982, (32d Leg. 2d Sess.), which received second reading on June 29, 1982, would repeal the *Venereal Diseases Prevention Act*, the *Sanitoria for Consumptives Act*, R.S.O. 1980, c. 463, and almost all of the *Public Health Act*. Part V of the Bill deals, *inter alia*, with rights of entry. It confers a right of entry exercisable "only at reasonable times" (s. 40(6)). The right to enter premises is not authority to enter a private residence without the consent of the occupier (s. 40(7)). Where consent is withheld, entry cannot be made, except with a warrant issued by a justice of the peace (s. 40(1)).

[15] See *Provincial Offences Act*, R.S.O. 1980, c. 400, s. 142.

supervision of the exercise of a power of entry, it is conducted within the administrative hierarchy of the relevant government institution; there does not appear to be any outside review. Further, we were given to understand that internal supervision ordinarily is initiated as an *ex post facto* administrative response to a complaint. When a complaint is received, frequently communicated by telephone, the report of the inspector concerned is reviewed and a response is made, usually by telephone and occasionally by letter. Among the government institutions examined in the course of our survey, we were not made aware of any instance where disciplinary action was taken against an official as a consequence of a complaint of abusive behaviour involved in the exercise of a power of entry.

Generally, it appears that complaints are associated with those sectors of government that deal with a broad segment of the public; for example, municipal public health and building inspectors, and provincial inspectors of day nurseries from the Children's Services Division of the Ministry of Community and Social Services. This is to be contrasted with the inspection of small client groups in industries where the inspection programme is intended to protect and benefit the industry. In this context, we were informed that there have been no complaints.

Exceptionally, however, the exercise of powers of entry may be scrutinized as part of an internal programme, as a measure unrelated to a specific antecedent allegation of abuse. This practice has occurred, for example, in the Pressure Vessels Safety Branch of the Technical Standards Division of the Ministry of Consumer and Commercial Relations, where supervisory personnel have accompanied inspectors in order to observe and evaluate how inspections, including powers of entry, are conducted.

While the interviews with representatives of provincial and municipal government institutions allowed us some insight into the present Ontario practice respecting powers of entry, it gave us a single perspective of this issue. In order to complete our investigation, it was necessary to make appropriate inquiries respecting those persons who are subject to the exercise of intrusive powers. With this objective in mind, a review of the "clipping service" of the Toronto *Globe and Mail* was undertaken. Queries were made of the Canadian Civil Liberties Association and the Office of the Ombudsman.[16] These investigations failed to provide us with a single example of an allegation of abuse of a power of entry. Our inquiry was then expanded. We consulted with organizations that could be characterized as being representative of regulated persons, who are subject to the exercise of intrusive powers by provincial and municipal government officials. Among these organizations were the Canadian Restaurant Association, the Confederation of Residents and Ratepayers Associations of

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[16] Annual reports of the Ombudsman from 1978 to 1981 were reviewed. In that period, only one complaint was received respecting powers of entry. As a result of a search by a travel industry investigator under s. 20 of *The Travel Industry Act*, S.O. 1974, c. 115, business records were seized. The Ombudsman found that the Ministry of Consumer and Commercial Relations had acted contrary to law by retaining these records "far longer" than sanctioned by statute. The Ombudsman made no reference to the manner of entry into the business premises of the complainant or the search and seizure: see The Ombudsman, *Seventh Report* (1980), Detailed Case Summary No. 3, at 19-21.

Toronto, the Ontario Trucking Association, and the Ontario Council of the Housing and Urban Development Association of Canada. Our queries met with the same response: none of these bodies reported any instances of abusive behaviour in conducting entry on land. The only complaint was made by the Confederation of Residents and Ratepayers Associations of Toronto, which criticized existing powers for being too narrow. The Confederation expressed concern that municipal inspectors were unable, in the absence of a permit or a permit application, to enter premises to check for violations of the Building Code,[17] and that they lacked authority to enter premises to enforce zoning by-laws.

The fact that our investigation did not uncover any report of abusive conduct by government officials does not, however, demand a conclusion that such behaviour does not exist in Ontario. In view of the limited reach of our survey, we believe that it would be prudent to state simply that serious abuse resulting in controversy and public discussion certainly has not occurred. Another reason for our caution lies in the sources that, of necessity, could be consulted to determine, from the perspective of the regulated, how powers of entry are exercised.

Due to the broad, pervasive nature of regulation in Ontario, only a relatively small sample of organizations could, as a practical matter, be surveyed. The organizations that were consulted may well not be institutions that would know, or be made aware of, abuses of powers of entry. For example, the Office of the Ombudsman and the Canadian Civil Liberties Association, it would be fair to say, are organizations that would receive communications from individuals who are relatively knowledgeable and, to some extent, politically sophisticated. The other organizations consulted, such as the Canadian Restaurant Association, the Ontario Trucking Association, and the Ontario Council of the Housing and Urban Development Association of Canada, would appear to represent the interests of groups that are seemingly well-established in their respective areas of economic endeavour. Indeed, certain of these organizations may be regarded as having what is essentially a symbiotic relationship with the government regulators who supervise their particular industry or business. It may be argued that regulation may have the effect of serving the interests of these organizations by making it difficult for new competitors to enter the market. For this reason, such organizations may favour zealous regulation, including vigilant scrutiny of businesses and individuals through the vigorous exercise of powers of entry and other intrusive powers. How these organizations view powers of entry may reflect a somewhat self-interested perspective that, from the point of view of individual rights, may be conservative.

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[17] The Building Code is R.R.O. 1980, Reg. 87, made under the *Building Code Act*, R.S.O. 1980, c. 51.

CHAPTER 4

OTHER REFORM APPROACHES TO POWERS OF ENTRY

The subject of statutory powers of entry and other intrusive powers has been considered by other law reform bodies. In the introduction to this Report, we referred to the Royal Commission Inquiry into Civil Rights in Ontario,[1] conducted by the Honourable J.C. McRuer, former Chief Justice of the High Court of Ontario. Study of this topic, albeit with various emphases, has been undertaken also by the Manitoba Law Reform Commission, the Law Reform Commission of Australia, the Law Reform Commission of Western Australia, and the New Zealand Public and Administrative Law Reform Committee. It is worthy of note that these studies were not restricted to powers of entry alone, but extended to certain intrusive powers exercisable after an entry had been effected.

We shall first examine the proposals that were recommended for Ontario by the Royal Commission Inquiry into Civil Rights. We shall then turn our attention to the approaches suggested in other jurisdictions.

1. ROYAL COMMISSION INQUIRY INTO CIVIL RIGHTS

In the First Report of the Royal Commission Inquiry into Civil Rights, powers of entry, search, and seizure were reviewed.[2] As we noted earlier,[3] the breadth of statutory powers of entry and, in particular, the fact that many were exercisable without prior judicial approval led to a conclusion that "the individual is now much more vulnerable to invasions of his rights than at any time in the past".[4]

Although the McRuer Commission criticized the threat to civil rights that was posed by broad intrusive state powers, it acknowledged that these

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[1] Hereinafter referred to as the "McRuer Commission".

[2] Province of Ontario, *Royal Commission Inquiry into Civil Rights*, Report No. 1 (1968), Vol. 1, at 410-26 (hereinafter referred to as "McRuer Report").

[3] *Supra*, ch. 1, at 1.

[4] McRuer Report, *supra*, note 2, at 413. See, also, Denning, *Freedom under the Law* (1949), at 107, where Sir Alfred Denning, after discussing the breadth of inspection powers conferred on government officials, commented that "[t]he granting of these powers of entry is a complete departure from the principles hitherto enforced in England".

rights were not absolute. The McRuer Report identified certain individual rights,[5] and pointed out that, although fundamental in nature, they might be subject to qualification or interference, so long as any encroachment was not unjustifiable.[6] Powers of entry were conceded to be "a necessary part of many types of modern legislation".[7] For the McRuer Commission, the question was how to achieve the difficult balance that would permit only those encroachments on individual rights that were justifiable.

As a general matter, the McRuer Commission was of the view that powers of entry should not be conferred through implication or by reliance on the *Interpretation Act*. It recommended that, where it is intended to confer powers of entry, search and seizure on public officials, they should be created expressly by legislation in "clear and unambiguous language".[8] The purpose of this proposal was to ensure that members of the Legislative Assembly, who would be asked to approve such powers, would be made aware that the particular legislation purported to interfere with civil rights in this manner. While the McRuer Report did not specifically address the issue, it would appear to be a corollary of this recommendation that intrusive powers should not be given by regulation or other forms of subordinate legislation.

In evaluating the extent to which existing statutory powers of entry unjustifiably encroached on traditional individual rights, the McRuer Commission looked to the entry and search powers of a police officer as a standard. Referring to section 14 of *The Summary Convictions Act*,[9] the present version of which is section 142 of the *Provincial Offences Act*,[10] the McRuer Commission cited four significant safeguards of civil rights: a requirement of prior judicial authorization before entry or search could lawfully be effected; a requirement of reasonable and probable grounds to believe that the place to be searched contained an article in respect of which an offence had been committed, or that would afford evidence of the commission of an offence; specification of the place to be searched, and, generally, of the property to be seized; and a requirement that, unless otherwise ordered, the warrant be executed during the day. In the view of the McRuer Commission, whether these safeguards should apply to statutory powers of entry depended upon the purpose of the governing statute and the purpose of the power.

The McRuer Commission drew a distinction between two categories

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[5] The following passage from the McRuer Report, *supra*, note 2, at 386-87, identifies these rights:

> The main individual rights affected by the exercise of investigatory powers are the right to privacy, the right to the enjoyment of one's property, the right to be left alone and the right to keep one's information and ideas to oneself. In other words, the freedom not to speak. The right to the enjoyment of one's property involves freedom from trespass to one's lands, buildings and personal property. The wide ambit of the tort of trespass is well known and 'legalized trespass' is readily recognized in any statute.

[6] *Ibid.*, at 387.

[7] *Ibid.*, at 413.

[8] *Ibid.*, at 422.

[9] R.S.O. 1960, c. 387.

[10] R.S.O. 1980, c. 400.

of statute, "regulatory" and "penal". The purpose of a regulatory statute was seen to be the safeguarding of the public. In the words of the McRuer Report, inspections to enforce the provisions of regulatory legislation "are not primarily for the purpose of detecting offenders in order that prosecutions may be launched, nor for securing evidence to support prosecutions".[11] On the contrary, their primary purpose was seen as being "educative and disciplinary in character, to secure compliance with the statutes".[12] Further, it was suggested that it was "not unreasonable" to oblige persons, who were required in the public interest to obtain a licence in order to carry on business, to submit to reasonable inspection to ensure compliance with the terms of the licence.[13] In penal statutes, on the other hand, inspection was stated to be "neither educative nor disciplinary but for the purpose of detecting offences and securing evidence on which to base either a prosecution or a civil action".[14] The McRuer Commission was of the view that inspections under regulatory statutes need not be sanctioned by judicial authority. Imposing such a requirement, it was argued, would frustrate the purpose of these statutes. By contrast, it was recommended that inspections under penal statutes should be permitted only with prior judicial authorization in the form of a warrant.

The McRuer Commission also stated that a clear distinction should be drawn between private dwellings and other premises. As a general rule, it recommended that the power to enter and search a private dwelling should be conditioned on judicial approval in the form of a warrant, which was to be obtained under section 14 of *The Summary Convictions Act*.[15] The proposal in favour of a greater degree of protection for the home appeared to follow from acceptance of the traditional common law notion that the home is to be accorded greater sanctity than other kinds of premises.[16]

Further, it was recommended that "[e]very statute authorizing a right of search should provide that the search be exercised during the day, unless otherwise ordered by judicial authority".[17] The McRuer Commission regarded this as "a minimum safeguard for the right to privacy and a safeguard against breaches of the peace".[18]

With respect to chattels, the McRuer Commission considered the power to stop and detain vehicles. It was recommended that, except in cases involving public safety or public health, discretionary power to search and detain should be abolished, and that the exercise of the power should be conditioned on reasonable grounds for belief that the statute in question was being violated.[19]

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[11] McRuer Report, *supra*, note 2, at 415.

[12] *Ibid.*

[13] *Ibid.*

[14] *Ibid.*, at 415-16.

[15] *Ibid.*, at 418-19 and 422.

[16] See discussion *supra*, ch. 2, at 3-4.

[17] McRuer Report, *supra*, note 2, at 423.

[18] *Ibid.*, at 418.

[19] *Ibid.*, at 425.

One final aspect of the recommendations of the McRuer Commission to which we wish to draw attention is that a stricter approach was proposed for seizure, as distinct from entry and search alone. Since seizure of property was regarded as a more serious interference with civil rights than simply entry,[20] it was recommended that the strict requirements for obtaining a search warrant should be satisfied, and, in particular, that the power to seize property should be made conditional on the existence of reasonable grounds for believing that the property to be seized was related to the commission of an offence.

As we have explained in chapter 2, the recommendations of the McRuer Commission were implemented, in part, following the publication of the McRuer Report. For example, the distinction that was drawn between entry into private dwellings and entry into other premises was accepted and, as a result, various statutes now impose a warrant requirement in the case of the former. Further, numerous statutes now provide that entry, in some cases without a warrant, must be made between sunrise and sunset.

2. MANITOBA LAW REFORM COMMISSION

On two occasions, the Manitoba Law Reform Commission has considered the subject of powers of entry and other intrusive powers.[21] In 1972, the Commission presented the *Report on "The City of Winnipeg Act"*,[22] which dealt with the administrative, licensing, entry, search, and inspection powers conferred by statute on the City of Winnipeg, its agents, officers, and employees. Seven years later, in a Report entitled *Report on Enforcement of Revenue Statutes*,[23] the Commission examined, *inter alia*,[24] the

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[20] The following passage from the McRuer Report, *ibid.*, at 419, distinguishes powers of entry from powers of seizure:

> In some respects the exercise of this power [of seizure] is a greater interference with the civil rights of an individual than the exercise of the power of entry onto his real property. Seizure is a dispossession of property, either permanently or temporarily, while entrance onto premises is usually a temporary interference, not entailing dispossession.
>
> The conditions authorizing seizure should be more stringent than those empowering an investigator or inspector to enter property or inspect documents. We can see no valid reason for departing from the principles applicable to search warrants where seizure is anticipated.

[21] In a third Report, *Report on the Case for a Provincial Bill of Rights*, Report #25 (1976), the Manitoba Law Reform Commission recommended *A Proposed Bill of Rights for Manitoba* that included a search and seizure provison intended to prevent unreasonable interference with privacy. Section 9 declared that a search or seizure was deemed to be an unreasonable interference unless lawfully made in accordance with a court order or search warrant or "in response to circumstances of such seriousness and urgency as to require and justify immediate action without the authority of such an order or warrant".

[22] Manitoba Law Reform Commission, Report #7, *Report on "The City of Winnipeg Act"* (1972).

[23] Manitoba Law Reform Commission, Report #33, *Report on Enforcement of Revenue Statutes* (1979).

[24] The Report also discussed solicitor-client privilege and the return of seized documents.

powers of entry, search, and seizure, with and without warrant, that were used to enforce various provincial taxation statutes.[25] Each of these Reports took a different approach to the exercise of powers of entry.

(a) *Report on "The City of Winnipeg Act"*

In 1971, the Manitoba Law Reform Commission was requested by the Attorney-General for Manitoba to examine *The City of Winnipeg Act*[26] and other statutes "with a view to deciding whether or not the provision for administrative powers as contained in the various statutes are reasonable, giving due consideration to the question of reasonable safeguards for the rights and civil liberties of individuals while ensuring the public interest by reasonable safeguards to ensure compliance with the law".[27]

In the *Report on "The City of Winnipeg Act"*, the recommendations of the McRuer Report were adopted as guiding principles that were used to evaluate the individual entry, search, and inspection provisions of *The City of Winnipeg Act*.[28] Where particular sections, measured against this standard, were found to be wanting, the Manitoba Law Reform Commission proposed specific ameliorative amendments.

The Manitoba Law Reform Commission made certain recommendations that appear to apply generally to the exercise of powers of entry, inspection, search, and related intrusive powers. It recommended that the exercise of such powers should be subject to a requirement of either making a request for permission to enter and inspect or giving notice of a proposed entry. If a request was made and entry was refused, and there was "no urgent need", it would be appropriate to send a written notice respecting the entry. If the notice was ignored, a warrant should be sought. It was further proposed that warrants "ought not to be available except on reasonable and probable grounds and to cope with hazardous emergencies".[29] The Commission was of the view that a warrant requirement would not delay or impede the performance of necessary municipal functions. It confidently asserted that, where entry was refused and there was an "urgent need", "no doubt a warrant could be speedily obtained on reasonable and probable grounds".[30] Finally, the Commission expressed the view that the power to conduct a "spot" inspection of premises, which it described as a "sudden 'raid' ",[31] was unnecessary.

The Manitoba Commission also made specific reference to business premises. During normal business hours, it stated that these premises should be as accessible to city inspectors as they were to the public.[32]

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[25] *Supra*, note 23, at 31, *n.* 4.

[26] S.M. 1971, c. 105.

[27] Letter of July 26, 1971, quoted in *Report on "The City of Winnipeg Act"*, *supra*, note 22, at 5.

[28] *Supra*, note 26.

[29] *Report on "The City of Winnipeg Act"*, *supra*, note 22, at 25.

[30] *Ibid.*

[31] *Ibid.*

[32] *Ibid.*

While it is not entirely clear, it appears that the Commission was of the view that, where an entry was to be made at a time other than during business hours, the warrant requirement should apply.

Finally, the Commission recommended that, where officials had engaged in oppressive conduct by effecting an entry, inspection, search, or seizure, whether or not under the authority of a warrant, the necessity of which could not be reasonably demonstrated, a civil action for damages should be available, in addition to any other existing remedies at law.[33] It was thought that an award of damages would cause the offending municipal officials to be instructed to improve their conduct in the exercise of these powers or, if they persisted in their behaviour, face dismissal. The Commission commented that this proposal might be implemented by amending *The Privacy Act*[34] and by amending legislation regulating municipalities, including *The City of Winnipeg Act* and *The Municipal Act*.[35]

Subsequent amendments to *The City of Winnipeg Act* implemented many of the specific proposals that were advanced in this Report.[36] In particular, an amendment was enacted that stipulated that, where consent to entry is refused or entry is prevented by an owner or occupier, a warrant may be issued authorizing the person named therein to exercise the power except "when an emergency or danger to person, or property arises or is apparently about to arise", in which case the Chief Commissioner may authorize entry.[37] In addition, it should be noted that legislation has not been enacted to create a right to damages in the event of oppressive conduct in the exercise of powers of entry or other intrusive powers.

(b) *Report on Enforcement of Revenue Statutes*

The study of intrusive powers in the context of revenue law enforcement, which culminated in the *Report on Enforcement of Revenue Statutes*, was also undertaken by the Manitoba Law Reform Commission pursuant to a reference from the Attorney-General. In re-examining the issue of entry and search, the Commission no longer maintained its strict adherence to the principles governing entry, search, and seizure that were enunciated in the McRuer Report.

Three kinds of intrusive power were considered: the power to enter and search premises without a warrant; the power to seize without a warrant; and the power to enter, search, and seize with a warrant. In its treat-

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[33] *Ibid.*, at 41-42.

[34] S.M. 1970, c. 74.

[35] S.M. 1970, c. 100.

[36] *An Act to amend The City of Winnipeg Act*, S.M. 1972, c. 93, ss. 26 and 89, and *An Act to amend The City of Winnipeg Act*, S.M. 1974, c. 73, ss. 8, 24, 25, 29, 30, 31, 33, 38, and 97.

[37] *An Act to amend The City of Winnipeg Act*, S.M. 1974, c. 73, s. 8, enacting s. 143.1(1) and 143.1(3). Under *The City of Winnipeg Act*, *supra*, note 26, the Chief Commissioner is the Chairman of The Board of Commissioners of The City of Winnipeg (s. 43) and is "responsible for the co-ordination and implementation of all policies and programs" (s. 54(1)).

ment of entry and search without a warrant, the Manitoba Commission departed from the principles of the McRuer Report, recommending that such entry and search by officials of the Department of Finance should be authorized where the Minister has reasonable and probable grounds to believe that business records are kept there.[38] In some cases, this would allow entry into a private dwelling house without prior judicial approval. It will be recalled that, by contrast, the McRuer Commission recommended that judicial approval should "always" be a prerequisite to a right of entry and search of a private dwelling.

In its discussion of the power to seize without a warrant, the Commission observed that, in Manitoba, legislation empowered seizure without a warrant, although, as a safeguard, the authority to make a decision to order such a seizure was restricted to a limited number of senior officials in the Department of Finance. The Commission did not recommend abolition of seizure without a warrant.[39] However, it did make two recommendations that are worthy of note. First, the Commission recommended that seizure without warrant should be limited to "situations in which there are reasonable and probable grounds to believe that immediate seizure is necessary to prevent the suppression or destruction of evidence".[40] Secondly, believing that a form of external scrutiny was justified, the Commission further recommended that, where seizure without warrant had been effected, the Minister should be required, within ninety days, to make an appropriate report to a Committee of the Legislature or a judicial inquiry board.[41] It will be recalled that the McRuer Report recommended that seizure of property should be permitted only with a warrant.[42]

With respect to the power of entry, search, and seizure under the authority of a warrant, the Manitoba Law Reform Commission recommended that this power should be available only where there were reasonable and probable grounds to believe that a statutory violation had occurred or was likely to occur, and that an application for a warrant should be supported by sworn evidence establishing the facts upon which the application was based.[43] Unlike the other proposals that we have outlined, this one is consistent with the McRuer Report.

When the Commission considered the time at which intrusions should be permitted, it confined its proposal to search and seizure without a warrant. It recommended that such search and seizure should "be conducted

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[38] See *Report on Enforcement of Revenue Statutes*, *supra*, note 23, at 8 and 28.

[39] In the *Report on Enforcement of Revenue Statutes*, *supra*, note 23, at 11, one Commissioner, Mr. Val Werier, dissented from the Commission's recommendation, expressing the view that "seizure without the authority of a warrant should not be allowed unless there is overwhelming evidence that it is absolutely necessary for the welfare of the state". In his view, there was no such evidence in the case of revenue statutes. He recommended therefore that authority to seize without warrant should be removed from all revenue statutes.

[40] *Ibid.*, at 10.

[41] *Ibid.*, at 11.

[42] See McRuer Report, *supra*, note 2, at 419 and 423.

[43] See *Report on Enforcement of Revenue Statutes*, *supra*, note 23, at 11-15 and 28.

at reasonable hours considering, however, the circumstances of each case".[44] The recommendation regarding the time of search in the McRuer Report appeared to apply to searches both with and without warrant. As we noted earlier, the McRuer Commission proposed that the power should be exercised during the day, unless a court ordered otherwise.[45]

3. LAW REFORM COMMISSION OF AUSTRALIA

In April, 1976, the Attorney General for the Commonwealth of Australia requested the Law Reform Commission of Australia to "advise on Commonwealth and Territory laws for the protection of privacy".[46] This reference required the Commission to examine activities affecting privacy carried on by the Australian government and its agencies and by the private sector. Among the matters that were to be examined in studying government behaviour were the existing powers of entry and search possessed by police and other government officials.

In June, 1980, the Law Reform Commission of Australia published two discussion papers[47] that contained tentative proposals respecting the protection of privacy in Australia. Publication of these papers was intended to stimulate informed discussion and elicit comments that would assist the Commission in reaching conclusions and preparing a final report.

In Discussion Paper No. 13, *Privacy and Intrusions*, the Commission dealt with, among other matters, statutory powers of entry and search that had been conferred on administrative officials and police personnel.[48] That these powers formed an integral part of the regulatory and legislative controls necessary to a modern society was acknowledged. Although the Commission conceded that some intrusive powers were relatively innocuous, it concluded that "the totality of the official powers conferred on police, departmental inspectors, municipal officials and others permits a significant diminution of the claim to privacy".[49] Finally, it referred to the "understandable concern" that these powers would be abused, and that, in sum, "they will seriously diminish respect for privacy".[50]

In determining how to reconcile concerns for privacy with the need for intrusions, the Commission sought guidance in its earlier Report, *Criminal Investigation*, which contained a discussion of the exercise of powers of entry, search, and seizure by the Australia Police.[51]

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[44] *Ibid.*, at 17.

[45] See McRuer Report, *supra*, note 2, at 423.

[46] Law Reform Commission of Australia, Discussion Paper No. 14, *Privacy and Personal Information* (1980), para. 1, at 9.

[47] Law Reform Commission of Australia, Discussion Paper No. 13, *Privacy and Intrusions* (1980), and Discussion Paper No. 14, *Privacy and Personal Information* (1980).

[48] The other publication, Discussion Paper No. 14, *Privacy and Personal Information* (1980), concerned the maintenance of personal information respecting private individuals, and focused particularly on computerized information systems. This paper is not germane to this Report.

[49] *Privacy and Intrusions*, *supra*, note 47, para. 60, at 36.

[50] *Ibid.*

[51] Law Reform Commission of Australia, Report No. 2, *Criminal Investigation – Interim* (1975), at 88 *et seq.*

In the *Criminal Investigation* Report, the Law Reform Commission of Australia took the view that, in the interests of privacy and civil liberties, the exercise of powers of search and seizure should be subject to certain legislative controls. First, the Commission proposed the complete abolition of general warrants, which were search warrants unrestricted in their operation to particular factual circumstances. Secondly, a general rule was recommended that search and seizure should not be lawful unless made pursuant to a court order or warrant. To this general rule an exception was proposed, namely, that a search and seizure without a warrant or court order would be lawful only if made in accordance with one of the following criteria:[52]

> (a) pursuant to a specific statutory provision which sets out the specific purposes of the search;
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> (b) at the invitation or with the consent of the person in question, as evidenced by a signed acknowledgment, the absence of which should be prima facie evidence that the consent was not given; or
>
> (c) in response to circumstances of such seriousness and urgency as to require and justify immediate action without the authority of such an order or warrant.

In reference to the third criterion, it was recommended that, although legislation should not attempt to define exhaustively circumstances that would satisfy the standard of "seriousness and urgency", three classes of "urgent" searches should be specified: searches incidental to arrest, emergency searches necessary to prevent loss of evidence, and searches of vehicles suspected on reasonable grounds to be carrying any article that is an offensive weapon, or is either the fruit, instrument, or material evidence of the commission of a serious offence.[53]

Thirdly, the Commission proposed a "tightening" of the procedures governing the issuance of search warrants. It recommended, first, that the informant be obliged to submit an affidavit stating the reasons for the necessity of the warrant, and secondly, that a judicial officer be required to satisfy himself that the stated reasons, or some other reasons, justified the issue of the warrant, and endorse it accordingly. Concerned that its warrant requirement might impose an undue impediment in remote areas, where it might be difficult to locate an appropriate judicial officer, the Commission recommended the introduction of a procedure providing for the issuance of search warrants by telephone.[54]

In its Discussion Paper, *Privacy and Intrusions*, the Law Reform Commission of Australia recommended that the controls proposed in the

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[52] *Ibid.*, at 151.

[53] *Ibid.*, para. 198, at 92. The Commission commented that its search and seizure recommendations were "modelled to some extent on the United States Fourth Amendment doctrine": see *supra*, note 51, para. 199, at 93.

[54] The Commission also proposed certain controls for the exercise of search and seizure powers by customs and excise officers.

Criminal Investigation Report "should apply as a general rule to all Commonwealth and Territory officials in exercising powers of search, seizure and entry".[55] This proposal meant that the recommendations of the earlier Report were adopted through incorporation by reference. In two respects, however, the recommendations contained in the later Discussion Paper differ. First, the Commission provided a more detailed exposition of its warrant rule. It recommended that powers over entry, search and seizure should normally be exercisable only in the following circumstances:[56]

- on the basis of a warrant granted by a judicial officer;
- such warrant being granted on reasonable grounds of suspicion related to specific matters; and
- the warrant satisfying the requirement of particularity in its terms.

Secondly, the Commission recommended that, where it was neither appropriate nor feasible to obtain a warrant prior to search and seizure, search and seizure without a warrant should be allowed, subject to the following minimum standards:[57]

- Such powers may only be invoked where there is a reasonable belief as to the need for urgent action. If such a belief is not held, a warrant should be obtained.
- The exercise of power should be subject to review within a short period by a judicial officer.
- A record should be kept of the details of the retrospective warrant.
- The judicial officer should be given power to refer the matter to the relevant disciplinary authorities where he considers that the case is one where the official took action without any genuine belief in the reasonableness of his action.[58]

While the Law Reform Commission of Australia stated that it had not completed a review of statutory provisions that gave a right of entry, but did not relate to search and seizure, it expressed a "provisional view" that the safeguards that it proposed should apply also to bare powers of entry.[59]

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[55] *Privacy and Intrusions*, *supra*, note 47, para. 67, at 40.

[56] *Ibid.*, at 2, and para. 67, at 40.

[57] *Ibid.*, para. 71, at 42.

[58] In order to ascertain the extent to which statutory provisions relating to search and seizure conformed to the general rule that they should be exercisable only on the basis of a warrant granted on reasonable grounds of suspicion, the Commission conducted a limited review of Commonwealth legislation. It found that 13 of 33 search powers were exercisable without warrant. The Commission observed that its study suggested "that most warrantless powers are conferred to deal with circumstances where there is a need for speedy action": see *ibid.*, para. 71, at 42.

[59] *Privacy and Intrusions*, *supra*, note 47, para. 72, at 42.

4. LAW REFORM COMMISSION OF WESTERN AUSTRALIA

In 1981, the Law Reform Commission of Western Australia was requested "to enquire into and report upon the extent to which undue intrusions into or interferences with privacy arise or are capable of arising under the laws of Western Australia".[60] Within the broad terms of reference, which covered both the public and private sectors, the Commission was specifically requested to examine the exercise of statutory powers by police and other government officials, with particular attention being given to powers of entry and search.

At this juncture, the Law Reform Commission of Western Australia has not completed its deliberations. It has, however, published a preliminary document, the *Working Paper and Survey on Privacy and Statutory Powers of Intrusion*, which supplemented the discussion paper of the Law Reform Commission of Australia, *Privacy and Intrusions*, in that it dealt with the exercise of statutory powers of intrusion by State officials.

The Working Paper and Survey reported the results of a survey of Western Australia statutes[61] and contained a review of the Discussion Paper of the Law Reform Commission of Australia and the Interim Report on powers of entry released by the New Zealand Public and Administrative Law Reform Committee.[62] The express purpose of publishing the Working Paper and Survey was to serve as a stimulus to public discussion. Comments from governmental bodies and members of the public were invited regarding the "need for [intrusive] provisions, their impact on personal privacy and any safeguards which might be adopted without impairing the ability of regulatory bodies to carry out their functions".[63]

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[60] Law Reform Commission of Western Australia, *Working Paper and Survey on Privacy and Statutory Powers of Intrusion* (1981), Project No. 65, at 4 (hereinafter referred to as "Working Paper and Survey").

[61] A review of subordinate legislation was not undertaken: see Working Paper and Survey, *ibid.*, at 5, *n.* 2.

[62] See *infra*, this ch., at 37-41.

[63] Working Paper and Survey, *supra*, note 60, at 23. In particular, comments were invited regarding the following fourteen issues:

1. As a general rule, should a warrant be required to enter or search premises?
2. If not, should prior notice to owners or occupiers be required to enter or search premises?
3. In what circumstances should entry or search without a warrant or notice be authorized?
4. Should there be special standards for entering or searching –
   - dwelling-houses?
   - licensed or regulated premises?
   - rural land?
   - any other types of premises?
5. As a general rule, should the power to enter premises be restricted to certain times?
6. Should officials be required to carry and produce a certificate of authority before seeking to enter premises?
7. Should administrative officials be required to have police accompany them to make an entry where consent to enter has been refused?
8. In what circumstances should force to enter premises be authorised?

The greater part of the Working Paper and Survey discussed the results of the review of the Western Australian statutory provisions. This review examined a variety of types of intrusive power. The Law Reform Commission reported that its survey, which did not purport to be exhaustive, indicated that there were more than 450 statutory provisions authorizing some kind of intrusion by state officials. Of these, 175 provisions authorized an entry on land for inspection and other purposes, and fifty-four authorized search and seizure.[64]

In analyzing the statutory provisions, the Law Reform Commission of Western Australia attempted to ascertain whether there was a discernible pattern. To this end, the provisions were classified into categories according to the subject matter of the statute.[65] The Commission commented as follows:[66]

> The various provisions recorded in the Survey have been adopted on an ad hoc basis in statutes enacted over a long period of time. There is no clearly definable correlation between the type of powers conferred and the type of regulatory activity involved nor does there appear to be a correlation between the scope of the power conferred and the time when the legislation was enacted. Thus, some early statutes provided for warrantless entries but others did

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9. Should there be a review procedure or complaints mechanism where searches are carried out without a warrant or where searches authorised by a warrant are carried out improperly? If so, what form should it take?

10. What standards should apply to searches of a person and in particular searches of body cavities? Should they be required to be carried out by persons of the same sex? In the case of body cavities, by a medical practitioner?

11. As a general rule, should the privilege against self-incrimination be preserved where statutes require information or documents to be supplied? If so, should a person be informed that he need not answer questions if they tend to incriminate him?

12. In what circumstances should officials other than police officers have power to arrest and what safeguards should apply?

13. Should departments be required to keep statistics or records relating to the exercise of their statutory powers to enter, search, require information or arrest?

14. Should procedures for entering, inspecting and searching premises, searching persons and seizing property be set out in a general code?

[64] These two kinds of intrusive power, as well as provisions requiring information to be supplied and/or documents to be produced (164), were specifically mentioned by the terms of reference. The reference, however, was not confined to these categories. In its survey, the Law Reform Commission of Western Australia included certain analogous powers that, while not mentioned in the terms of reference, were thought might give rise to "undue intrusions". The latter included provisions authorizing an inquiry (14), provisions sanctioning the arrest or apprehension of a person (23), provisions that either require a person to be the subject of a medical examination and/or treatment, or that stipulate that an examination is a prerequisite to receiving a benefit or exercising a right (19), and 9 miscellaneous provisions that might be considered intrusive.

[65] The categories were (1) Primary production, (2) Manufacture or marketing, (3) Conservation and environment, (4) Occupational or commercial matters, (5) Safety, (6) Social benefit or welfare, (7) Public health, (8) Public works, (9) Taxation and/or valuation, (10) Criminal offences, and (11) Miscellaneous.

[66] Working Paper and Survey, *supra*, note 60, at 5.

not, and the same is true for recent enactments. Perhaps the most that can be said is that the number of powers has increased as the number of regulatory bodies and activities has increased.

As we have stated earlier, we are informed that the deliberations of the Law Reform Commission of Western Australia are continuing and that recommendations for reform have not yet been proposed.

5. NEW ZEALAND PUBLIC AND ADMINISTRATIVE LAW REFORM COMMITTEE

Like the Law Reform Commission of Western Australia and the Law Reform Commission of Australia, the Public and Administrative Law Reform Committee of New Zealand is engaged in a study respecting powers of entry and search that has not yet been brought to completion. While a final report containing recommendations remains to be prepared, an Interim Report was released in June, 1981 by the New Zealand Minister of Justice, with the aim of encouraging discussion and comment.[67]

The New Zealand Committee began its study by commissioning research to identify and classify powers of entry and search. This survey revealed more than 150 such powers. The Public and Administrative Law Reform Committee then invited preliminary comments regarding the importance of and justification for these powers from the various government departments responsible for their exercise. The intention was to evaluate each power in light of these comments, a process that, at the time of the publication of the Interim Report, was continuing.

In the course of this analysis, the Committee formulated certain general guiding principles that, it believed, should be applied to every power. After each power is examined to determine whether it is consistent with these principles, the comments of the relevant government departments again will be solicited. Preparation of a final report, which will include proposals to improve the present position, will follow.

Since it was expected that a final report would be available only after a protracted length of time, it was thought desirable to publish an Interim Report to reveal the current views of the Committee. The purpose of this Interim Report was to articulate the guiding principles and to explain their rationale. While the Public and Administrative Law Reform Committee emphasized that these principles were not rules, it explained that they should be applied "consistently unless exceptional reasons justify a departure from principle in the case of a particular power".[68] Moreover, it was proposed that the onus of supporting a departure from principle should rest on the government department responsible for the particular power of entry and search.

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[67] This Report (hereinafter referred to as "New Zealand Report") is published as "Powers of Entry – An Interim Report" in [1981] N.Z.L.J. 287. The Report, as released by the Minister of Justice, is entitled "Rights of Entry and Search".

[68] New Zealand Report, *ibid.*, at 287.

The Interim Report set out fourteen principles, two of which are not relevant for our purposes.[69] While there was no mention of the Royal Commission Inquiry into Civil Rights in Ontario, the approach taken by the New Zealand Public and Administrative Law Reform Committee, as evinced in these principles, was very similar to that adopted by the McRuer Report. The guiding principles may be summarized as follows.

1. The Essential Power Principle

The Committee explained that the fundamental principle concerning powers of entry was that such powers should be given only where it was essential to achieve a statutory purpose. Factors relevant to a determination of this issue were declared to be "the particular purpose, the importance of the power in terms of its social purposes, and the likelihood of obstructiveness by individuals".[70] In discussing this matter, the Committee observed that the fact that a power is employed rarely does not mean that it is unnecessary, as its very existence may persuade persons to consent to entry.

2. The Express Power Principle

Like the McRuer Commission, the New Zealand Public and Administrative Law Reform Committee took the view that powers of entry should be conferred expressly and not by implication. Concern was expressed about the existence of a "significant proportion" of implied rights of entry, arising, for example, from a power of search. Furthermore, it suggested that, as a general rule, powers of entry should be granted by statute, instead of by a form of subordinate legislation. The reason for favouring the use of statutes to confer powers of entry was the same as that expressed by the McRuer Commission: to allow debate concerning whether the power should be given and the terms of the power. The Committee indicated, however, that powers of entry might be conferred exceptionally by regulations or by-laws.[71]

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[69] Principles 11 and 12, "The Questions Principle" and "The Challenge Requirement Principle" respectively, addressed matters beyond the purview of this Report. The first dealt with the evidentiary privilege against self-incrimination in relation to questions asked by an inspector. The second was concerned with the situation where, after an entry, a person is required to do work, or pay for it if he does not do it himself.

[70] New Zealand Report, *supra*, note 67, at 287.

[71] In the following passage, *ibid.*, at 288, the Committee distinguished between regulations and by-laws, arguing that a more restrictive approach should apply to the latter:

> [A power to enter] should always be conferred by the empowering Act, and not by regulations made under it, unless special considerations justify the location of the power to enter in the regulations themselves, for example if it would be misleading for readers of the regulations not to find the power there or, for example, if the conferment of power in the statute itself would necessarily mean (because of the variety of situations to which powers of varying scope would be appropriate) that it could only be expressed in the statute in undesirably overwide terms. Further, powers of entry should never be conferred by mere bylaws when this course is avoidable. For bylaws are commonly not as accessible to the public as statutory regulations are. . . . When an Act confers a power to make bylaws, bylaws conferring a power of entry should be specifically excluded.

3. The Precise Purposes Principle

The Committee explained that "[t]he purpose that justifies an entry should be expressed in terms which are as precise as the subject matter permits".[72] A broad statement of purpose, for example, providing that an entry may be made "for the purposes of this Act", was regarded as undesirable because it would create uncertainty. As a matter of general principle, it was thought that a person whose premises might be subject to a power of entry should be able to discover the purposes for which it might be exercised.

4. The Objective Belief Principle

On the premise that objective tests constitute "a check upon official eccentricity or arbitrariness",[73] the Committee articulated the principle that the condition precedent to an entry should not be expressed in terms of the opinion of an official – "where . . . is of the opinion that . . .". Instead, a condition precedent should be expressed in objective terms – "where he has reason to believe . . .".

5. The Notice Principle

The Committee proposed that reasonable advance notice of an entry should be required, except where it would defeat the purpose of the entry. In such a notice, reference should be made to the statutory source of the power, the purpose for which it is to be exercised, and the planned time of entry. The function of this notice would be to allow the person whose premises are to be entered an opportunity to ascertain, with the aid of counsel, whether the entry in fact was authorized by statute. The Committee suggested that, in some cases, it might be appropriate to give notice by telephone.

An ancillary issue that the Committee raised, but did not resolve, was whether persons who are licensed or otherwise regulated, or who have a contractual relationship with the entrant, should be treated differently, for the purpose of notice, from other persons.

6. The Evidence/Warrant Principle

As a general rule, it was proposed that, "[w]here the power is required for the purpose of ascertaining whether an offence has been committed, the official should obtain a warrant from a person acting judicially, following an application in writing on oath".[74] Further, it was suggested that, where an entry is to be effected without giving notice to the occupier, a warrant should be secured. It was recognized, however, that exceptionally "an overriding public interest" might necessitate creating a power to

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[72] *Ibid.*, at 288.

[73] *Ibid.*

[74] *Ibid.*, at 288-89.

enter without a warrant or notice. For example, the "need to act at once will sometimes override the need to obtain a warrant or give notice".[75] In such circumstances, the Committee suggested two further safeguards to govern the use of the power. These were a requirement of authorization from a senior government official in the relevant government department and the imposition of a duty to file a report after the power has been exercised.

7. The Reasonable Time Principle

With respect to the time of entry, the Committee recommended that, as a minimum standard, entry should be confined to "reasonable times". It observed that, in many cases, statutes limited the time at which entry might be effected and commented that this practice was to be encouraged. Generally speaking, the Committee disapproved of legislation conferring a power to enter premises "at any time". While acknowledging that "there may occasionally be sound reasons" for granting such a power, the Committee indicated that such a grant would have to be "convincingly justified by a department".[76]

By recommending a standard of reasonableness to govern the time of entry, the Committee differed from the McRuer Commission, which recommended that, as a general rule, entry should be effected during the day.[77]

8. The Forcible Entry Principle

The New Zealand Public and Administrative Law Reform Committee was of the view that a power of entry on land should not be accompanied by an additional power to employ force, unless the absence of such a power would frustrate the purpose of the entry.[78] It stated that "[a] power of entry which is silent about the use of force does not authorise force. It merely means that no action for trespass to land can be brought".[79]

9. The Identification Principle

It was proposed that an official exercising a power of entry should have in his possession a warrant of authority. This should identify him, his position, and the source and nature of his authority. As an additional measure, it was recommended that a government official should be subject to an obligation to produce his warrant of authority, irrespective of whether a request to see it is made by the person whose premises are to be entered.

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[75] *Ibid.*, at 289.

[76] *Ibid.*

[77] See *supra*, this ch., at 27.

[78] This principle was based on an understanding of the present law that is different from that of this Commission. In our discussion of the existing law in chapter 2, we indicated our view that a statutory power of entry includes a power to use reasonable force, should consent to the entry by the occupier be refused.

[79] New Zealand Report, *supra*, note 67, at 289.

It was thought that this requirement "may reassure many too timid to request it",[80] without adversely affecting the ability of the entrant to perform his responsibilities.

10. The Precise-Power Principle

The third principle enunciated by the Committee, which we discussed above, was that the purpose for which a power of entry has been conferred should be expressed in precise terms. The Committee further proposed that the "acts that the official can perform, and the questions he may ask once he has gained admission, should be specified as precisely as possible, and should be related to the purpose of the particular entry".[81] This principle was seen as constituting yet another protection against officials acting outside the scope of their legislative mandates.

13. The Compensation Principle

The Committee stated that, "[w]hen the power gives a right to compensation for damage occasioned by the entry, this should be assessed by an independent tribunal or Court".[82] It should be observed that, unlike the Manitoba Law Reform Commission in its *Report on "The City of Winnipeg Act"*,[83] this principle does not envisage the creation of a new civil right to compensation where the exercise of a power of entry causes injury or is otherwise improper. It refers only to a statutory right to compensation that already is in existence. Secondly, it appears to envisage compensation only when physical damage has been caused by the entry.

14. The Placement Principle

The Committee suggested that, as a matter of drafting, a power of entry should be located in juxtaposition to the statutory provision to which it is an ancillary enforcement power.

At the conclusion of the Interim Report, the New Zealand Committee briefly discussed certain matters of policy that remained to be settled. Although not included within the fourteen principles, the Committee stated its opinion that, as a general rule and, subject to exceptional circumstances, such as "civil emergency", a judicial warrant should be obtained before entry into a dwellinghouse, even in circumstances where it would not be necessary for other premises. However, the question whether a dwellinghouse included only the building inhabited by the occupier, or other grounds appurtenant to it, such as a garden or patio, was not resolved.[84] A second outstanding question was the length of time that a warrant should remain valid after its issue.

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[80] *Ibid.*

[81] *Ibid.*

[82] *Ibid.*, at 290.

[83] See discussion *supra*, this ch., at 30.

[84] See New Zealand Report, *supra*, note 67, at 290.

CHAPTER 5

CONCLUSIONS AND PROPOSALS FOR REFORM

1. ALTERNATIVES FOR REFORM

In chapter 2 of this Report, we examined the existing law of Ontario respecting powers of entry. In chapter 3, we reviewed the manner in which these powers are exercised and, in chapter 4, we considered approaches to reform that have been proposed by other agencies. In this chapter, we shall state our conclusions and recommendations.

In conducting our study of the existing law respecting powers of entry, we sought to ascertain whether the type of power given bore any relationship to the concerns addressed by the legislation under which the power was conferred. To this end, we classified the various powers of entry according to their purposes.[1] While it might be anticipated that powers of entry dealing with human safety would be more broadly defined than those respecting plants or animals, no such pattern was evident. Indeed, we found a legislative "wilderness of single instances".[2]

The major distinction in the scope of powers of entry appears to be based on whether the power is exercised for a provincial or a municipal purpose. Generally speaking, provincial officials are given power to enter in broad terms and need not receive prior consent.[3] By contrast, inspectors at the municipal level receive more narrowly circumscribed powers of entry. For example, inspectors under the *Public Health Act*,[4] who conduct over one hundred thousand inspections each year in the City of Toronto, initially seek entry by request and, where entry is refused, must seek judicial authorization in the form of an order.[5] Likewise, under the *Building Code Act*,[6] inspectors require a search warrant to enter a dwelling. So too,

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[1] See *supra*, ch. 2, Table 2.

[2] Alfred Lord Tennyson, *Alymer's Field*, as quoted in Williams, *Learning the Law* (1969), at 72.

[3] See, for example, the powers of inspection granted under the *Assessment Act*, R.S.O. 1980, c. 31; *Day Nurseries Act*, R.S.O. 1980, c. 111; and *Environmental Protection Act*, R.S.O. 1980, c. 141.

[4] R.S.O. 1980, c. 409.

[5] An exception to this general rule may be found in the power of entry and inspection conferred on the medical officer of health by s. 117(1) of the *Public Health Act*.

[6] R.S.O. 1980, c. 51, s. 11(4).

under the *Planning Act*,[7] the power of municipal inspectors to enter dwellings for the purpose of enforcing minimum standards is subject to a requirement of first obtaining a search warrant.[8]

While it may be argued that there is a greater need to control inspections at the municipal level due to the subordinate nature of municipal government, in our view such a difference in general treatment is not supportable. The various considerations that are relevant to a balancing of competing interests are too complex simply to rely on the view that powers of entry for municipal purposes should be more strictly controlled than powers of entry for provincial purposes. For example, there is a strong public interest in preventing dangerous housing conditions, which may be caused by violations of building standards or zoning by-laws.

In our view, more important than the absence of a readily discernible pattern in the legislative framework is the failure of the present law to show due regard for individual privacy. In Ontario, as we have seen, numerous broad powers of entry have been conferred upon government officials, both at the provincial and municipal levels. Relatively few controls have been established to govern whether, and the manner in which, these powers should be exercised. While, as a result of the McRuer Report, dwellings have been accorded greater protection than other premises in certain statutes, this is by no means the rule in Ontario. The pervasiveness of statutory intrusive powers can be seen as a startling derogation from the common law position, which viewed entry on land without consent as an extraordinary interference with private property rights to be confined to specific exceptional circumstances. Leaving aside the possible impact of the *Canadian Charter of Rights and Freedoms*, we have concluded that the existing legislative framework governing powers of entry in Ontario demonstrates insufficient regard for the value of individual privacy. If, as we have suggested earlier, this subject raises a fundamental issue of balancing an individual's right to privacy against the public interest in effective regulation, in our opinion the existing law tilts that balance unduly in favour of the intrusive power of government.

In light of the considerable discretion conferred upon government officials, we conducted a survey of the practice respecting powers of entry. We found that, in many cases, laudable measures have been adopted in order to protect individual rights. While, in the course of our survey, not a single allegation of abusive behaviour was brought to our attention, as we have stated earlier, we do not believe this warrants a conclusion that there is no abuse of powers of entry in Ontario. Bearing in mind the limited nature of our survey, it was our view that a more qualified conclusion should be made; that is, that there is no evidence that serious abuse resulting in controversy and public discussion has occurred in the exercise of these powers.

Against this background, we have formed the conclusion that certain

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[7] R.S.O. 1980, c. 379.

[8] *Ibid.*, s. 43(5)

mandatory minimum standards should be imposed on the exercise of powers of entry in Ontario. Ours is a modest proposal that seeks to reconcile the interest in effective government regulation with the interest in protecting individual dignity and privacy. It is a middle course between leaving the present situation intact by proposing no change, and modifying the law in a dramatic fashion, for example, by the imposition of a general warrant requirement. Before outlining the minimum standards that we believe should apply to powers of entry and intrusive powers, we wish to explain the reasons for our decision to adopt a middle course.

We were persuaded, for a number of reasons, that the present law should not be left undisturbed. First, although, as acknowledged in chapter 3, our survey did not uncover any report of abusive conduct by government officials, in our opinion a potential for abuse is inherent in the breadth of the existing legislative powers and in the absence, in many cases, of external supervision of their exercise. Thus, there is no effective assurance that individuals will be free from harassment by unwarranted inspections, which may be initiated improperly out of excessive zeal, or as a consequence of complaints from officious neighbours or business competitors. We believe that the potential for abusive conduct calls for the imposition of a limited degree of control on the exercise of powers of entry.

Further, the present law affords virtually no guidance to government officials and members of the public. While those government officials who exercise powers according to internal administrative policies may have a measure of certainty, those who operate in more fluid circumstances do not. Moreover, members of the public are simply left to guess whether the behaviour of an inspector or other official, which may be subjectively offensive, is authorized by law. In our view, it would be preferable to set minimum standards in order to guide public officials in the exercise of their powers and to apprise individuals of the degree to which their rights may be subject to interference.

Thirdly, while we recognize that, should the existing Ontario law remain as is, the construction of the *Canadian Charter of Rights and Freedoms* in particular cases might result in the development of standards to govern certain aspects of intrusive behaviour, we prefer not to rely entirely on this process as a solution. Indeed, the Charter, when construed, may not extend to all aspects of provincial powers of entry.[9] Further, it may take some time, perhaps years, before clear standards can be distilled from the jurisprudence. Accordingly, there seems little reason to hesitate in urging speedy adoption of minimum standards by provincial legislation. We also believe that the creation of minimum legislative standards would be consistent with the general scheme of the Charter and may constitute useful guidance to the courts in its interpretation. By providing that the rights and freedoms guaranteed therein are subject to reasonable limits "prescribed by law", the Charter anticipates an interplay between the provisions of the Charter on one hand, and federal and provincial legislation on the other.

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[9] See discussion, *supra*, ch. 2, at 15-16.

Finally, the resolution of powers of entry issues is important on a symbolic level, as representing the regard with which the Province of Ontario views the importance of the individual. By establishing standards to control the exercise of intrusive powers, the Province would evince a concern for individual dignity and privacy that would not be otherwise evident.

Having explained our rejection of the *status quo*, we turn now to discuss why we do not favour the institution of a general warrant requirement. Our reasons may be stated briefly. While requiring a warrant or other form of prior judicial authorization in all circumstances no doubt would afford maximum recognition and protection of individual privacy, it would do so at the price of great expense and inefficiency. Under such a regime, unless warrants were granted as a *pro forma* exercise, many government activities would, in our view, be seriously impeded. Yet, if *pro forma* warrants were issued without careful scrutiny of the reasons for the entry, one might well question whether warrants should be required at all. Further, a rigid warrant requirement would prevent entry into premises where immediate entry is essential in situations to preserve human life. Had widespread abuse of powers of entry been discovered, our attitude to the necessity for a form of prior judicial authorization might have been different. Evidence of misbehaviour would have raised a serious issue whether the decision to enter should be subject to external supervision in every case. In the absence of such evidence, we believe the disadvantages of a warrant or similar requirement would outweigh the advantages.

We would note that the McRuer Commission would require a warrant to enter a dwelling. After careful consideration, we are unable to agree with this position. Entry to private dwellings should not, in our view, be subject to a warrant requirement. We do not fail to appreciate, of course, the traditional, and perhaps emotional, support for the inviolate sanctity of the home. Nor do we question that the privacy claims associated with an individual's home generally are stronger than those respecting other premises. Yet we believe that their weight does not always and inevitably exceed that of the public interest in intrusion. If such were the case, a rule of prior judicial authorization would indeed be justifiable. However, it is not difficult to imagine circumstances where the imposition of a warrant requirement could cause delay endangering human safety: for example, where an entry must be effected to secure a "child in need of protection" under the *Child Welfare Act*.[10] In such a case, the formal requirement of a warrant might be only too successful in ensuring the protection of individual privacy at a risk to health or life. We observe, in passing, that the common law, ever vigilant in the protection of dwellings, allowed entry without consent and without prior judicial intervention in extraordinary circumstances.[11]

In addition, we considered, but also rejected, the approach adopted by the New Zealand Public and Administrative Law Reform Committee, namely, requiring a warrant for entry into a dwelling, except in cases of

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[10] R.S.O. 1980, c. 66.

[11] See *supra*, ch. 2, at 4.

"civil emergency".[12] To our mind, the scope of civil emergency is nebulous, and might well result in undue caution being exercised in the categorization of emergency situations, for fear of offending the general warrant requirement. We prefer to vest discretion in public officials to deal effectively and expeditiously with all types of situation, including emergencies, that require entry, and we are confident that our subsequent recommendations relating, for example, to the use of force will prevent abuse of the power of entry where a dwelling, and indeed other premises, is involved.

Before proceeding to a discussion of our recommendations, we think it necessary to address two further matters: first, whether warrants should be required under penal, as opposed to regulatory, statutes; and, secondly, whether powers of entry should be conferred only by express legislation.

The McRuer Commission and, subsequently, the New Zealand Public and Administrative Law Reform Committee[13] took the view that inspections for the purpose of detecting the commission of offences should be subject to a warrant requirement. The position of the McRuer Commission was based on a classification of statutes as either regulatory or penal.

We question, however, whether it is possible to discern such a dichotomy between statutes. In Ontario, many statutes include provisions that establish penalties, including imprisonment, for violation of prescribed standards.[14] While these provisions undoubtedly are penal in nature, we do not agree that they necessarily give the entire statute that character. Indeed, most Ontario statutes that strive to regulate commercial behaviour do provide for penalties in the event of non-compliance. Further, although we agree that particular statutory provisions can be viewed as penal, while others can be classified as regulatory, it does not inevitably follow that the consequences of a breach to an individual are more serious in the case of a penal provision than in the case of a regulatory provision. A violation of the latter may lead to the cancellation or non-renewal of a licence, without which a trade or profession cannot be pursued. Such a sanction, while perhaps lacking the moral opprobrium that may be associated with the application of a penal provision, may be more acutely felt than a conviction for breach of a penal provision.

With respect to the conferral of powers of entry, the McRuer Commis-

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[12] New Zealand Public and Administrative Law Reform Committee, "Powers of Entry – An Interim Report", [1981] N.Z.L.J. 287, at 290.

[13] It will be recalled that the New Zealand Committee acknowledged that "an overriding public interest" might necessitate conferring a power to enter without warrant or prior notice, in which case, certain safeguards should apply: see *supra*, ch. 4, at 39-40.

[14] Provincial jurisdiction to create penalties as a means of enforcing provincial legislation is conferred by s. 92.14 of the *Constitution Act, 1867*, formerly *The British North America Act, 1867*, 30 & 31 Vict., c. 3 (U.K.), which gives the legislature of each province power to make laws in relation to:

> The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this section.

sion recommended that "[l]egislation which is intended to give power to enter, search and seize property should so state in clear and unambiguous language".[15] This recommendation was premised on the belief that political accountability for the decision to create these powers should be borne by the Legislative Assembly of Ontario. The New Zealand Public and Administration Law Reform Committee expressed the view that "[a] power to enter should be conferred expressly and not by implication"[16] and that it should "always" be conferred by statute, and not by subordinate legislation.[17]

We agree that, in view of the inevitable effect of the exercise of powers of entry on individual rights, these powers should be conferred expressly by statute. Accordingly, we recommend that, in the future, powers of entry should be created expressly by statutes enacted by the Legislative Assembly of Ontario. Notwithstanding our view that this recommendation has an important symbolic value, we recognize that its implementation would be of negligible significance to most laypersons. What matters is not the location of the authority for the entry, which is unlikely to be consulted in any event, or whether the power is express or implied, but whether the entrant informs the occupier of the purpose for which entry is sought, draws attention to the source of his authority, and carries it out in a manner that involves the least encroachment on the dignity and privacy of the occupier.

At this stage, we wish to state the details of the middle course to which we referred earlier in this chapter. We recommend that minimum standards be embodied in a new *Powers of Entry Act* that would apply to all powers of entry and all intrusive powers contained in statutes, regulations, and by-laws in force in Ontario. The enshrining of the rules in a statute would require their use in all situations, would discourage their abandonment at the whim of an individual official, and would be a symbol of a commitment to privacy at little cost to society.

We would emphasize that the standards that we are about to recommend are minimum standards to which all powers of entry should be subject. Accordingly, the standards established by the proposed Act would supersede lesser standards contained in other legislation. Where other legislation establishes higher or more stringent standards than are set out below, the proposed *Powers of Entry Act* would have no effect on the duty of public officials to comply with them. A failure to reach the higher legislative standards would not be excused even though there was satisfactory compliance with the proposed *Powers of Entry Act*. In other words, we do not intend that the proposed Act should be available as a shield with respect to conduct by officials that does conform to the relevant legislation.

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[15] Province of Ontario, *Royal Commission Inquiry into Civil Rights*, Report No. 1 (1968), Vol. 1, at 422.

[16] *Supra*, note 12, at 288.

[17] The New Zealand Committee, however, stated that, in exceptional circumstances, a power to enter might be conferred by subordinate legislation: see *supra*, ch. 4, at 38.

2. RECOMMENDED STANDARDS

(a) SCOPE

The minimum standards that we propose should apply to all powers of entry, irrespective of how they have been created. This would embrace powers conferred expressly by public and private Acts of the Legislative Assembly of Ontario, regulations, by-laws, or other forms of subordinate legislation, and powers that may be implied from the conferral of other powers the exercise of which necessarily assumes a prior entry on land. We believe further that these minimum standards should apply to entry both with and without a warrant.

More particularly, the scope of the proposed *Powers of Entry Act* should mirror that of this Report, which was outlined in chapter 1. It will be recalled that there were three characteristics that defined the ambit of this study. Each of these, we believe, should be the subject of clear definition in the proposed Act.

First, we observed that, while certain powers of entry are conferred on private individuals, such powers would not be embraced by this Report. Our concern has been the exercise of powers by public authorities. The minimum standards that we shall propose relate, in our Draft Bill, to an "entrant", whom we recommend should be defined to mean a person who is authorized to exercise a power of entry on behalf of a public authority.[18] We further recommend that a "public authority" should be defined to mean the Crown, a municipality, or other public body that is given public duties by or under an Act, in aid of which a power of entry is given.[19]

Secondly, like the other law reform agencies discussed in chapter 4, we have been concerned not only with the power to enter premises, but also with the powers that are exercisable by officials once entry has been effected, and for which the authority to enter has been given. The minimum standards that we shall recommend for entry should, in our view, apply equally to these powers. Accordingly, we recommend that the term "entry" should be defined broadly to mean the entry, search, inspection, seizure, or act in aid of which a power of entry is given.[20] Similarly, we recommend that "power of entry" should be defined to mean the authority, express or implied, given by or under an Act to enter, search, inspect, or seize, or do any act in or respecting a place or thing in the possession of another without his consent, whether with or without a warrant.[21]

Finally, as we observed in chapter 1, the exercise of intrusive powers in relation to chattels raises the same fundamental policy issue of balancing the individual's right to privacy against the public interest in effective regulation as is raised by the exercise of powers to enter real property. The

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[18] See Draft Bill, s. 1(a).

[19] *Ibid.*, s. 1(d).

[20] *Ibid.*, s. 1(b).

[21] *Ibid.*, s. 1(c).

search of a private automobile or a commercial vehicle involves an encroachment on individual rights and dignity that, in some cases, may be as demeaning to a person as a search of his premises. For this reason, we believe that the proposed minimum standards should apply equally to chattels. We recommend, therefore, that entry should comprehend acts done in relation to chattels. It is for this reason that our definition of "power of entry" refers to the authority to enter, search, inspect or seize not only in relation to a "place", but also in relation to a "thing".

(b) Objective

We recommend that every entry should have an objective to which the entry should be confined.[22] This requirement is intended to limit the occasions on which individual privacy may be compromised to circumstances where there exists a specific reason for the entry. Implementation of this principle should prevent the exercise of intrusive powers for improper purposes or for what is usually called a "fishing expedition".

(c) Reasonableness of Manner of Entry

We recommend that an entrant should exercise a power of entry at a time and in a place and manner that is reasonable having regard to the objective of the entry.[23] The notion of "reasonableness", in our view, connotes an objective, flexible standard that would vary with the circumstances. In addition, our recommendation makes it clear that reasonableness must be evaluated in light of the particular objectives to which the entry is confined.

One matter that will obviously be important to an individual, especially in relation to his or her residence, is the time of entry. For this reason, we have recommended that the proposed statute should expressly state that the time of entry should be reasonable. The McRuer Commission, it will be recalled, proposed a general rule that entry should be effected during the day, unless otherwise authorized by judicial authority.[24] While we believe that entry into a dwelling[25] should be restricted to daytime hours – subject to rare exceptions, for example, in case of emergency – we do not believe that an explicit direction to this effect is warranted. It is our view that, in determining whether a power of entry was exercised reasonably, one material factor that a court will consider is the type of premises entered.

(d) Identification

Given the importance of the privacy interest, and the vulnerability

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[22] *Ibid.*, s. 2.

[23] *Ibid.*, s. 4.

[24] See *supra*, ch. 4, at 27.

[25] In numerous Ontario statutes, "dwelling" is defined to mean "any premises or any part thereof occupied as living accommodation": see, for example, *Business Practices Act*, R.S.O. 1980, c. 55, s. 1(*e*); *Consumer Protection Act*, R.S.O. 1980, c. 87, s. 1(*h*); and *Motor Vehicle Dealers Act*, R.S.O. 1980, c. 299, s. 1(*c*).

that is attendant upon allowing a stranger into private premises, particularly a dwelling, we recommend that every entrant should, while exercising a power of entry, carry his identification, including evidence of his appointment and photograph, and upon the request of the person in possession of the place or thing in respect of which the power of entry is exercised, or of his servant or agent, should produce the identification and inform such person of the authority for and the objective of the entry.[26]

The policy underlying this proposal is simple. We are of the view that a person whose rights of privacy are about to be temporarily abridged is entitled to be apprised of the reason for the interference: without this safeguard, an occupier should not be required to admit a stranger onto his land. Where the place to be entered is a dwelling, we believe that the need for identification is even more acute. As we have noted, the present practice conforms to our recommendation.[27]

In requiring this information to be given only upon request, we differ from the New Zealand Public and Administrative Law Reform Committee which, it will be recalled, recommended that identification should be provided to an occupier, whether or not a request has been made.[28] Underlying the Committee's proposal was a concern for the reticent individual, who might be hesitant to challenge a person professing to exercise governmental authority. We do not share this concern, as it is our view that individuals can be expected to request a form of identification from government officers. Moreover, as we have explained during our review of the existing practice, in certain regulated industries the inspectors are well known, and identification is unnecessary. In many cases there are return visits by inspectors. In all these cases, such an obligation would encrust an unnecessary layer of formality on what are now informal, amicable relations. Further, unlike the approach of the New Zealand Public and Administrative Law Reform Committee, we believe – and shall shortly recommend – that failure to adhere to our minimum standards should give rise to civil liability. Accordingly, adopting the New Zealand approach would mean that failure to provide identification could result in civil liability even in those cases where the occupier clearly has not been prejudiced — for example, where, after repeated entries, an inspector, well known to the occupier, does not show his identification.

(e) The Record

We recommend that every entrant who exercises a power of entry should be obliged to keep a record of each entry made and should report to the public authority for which he acts.[29] This procedure will facilitate in-

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[26] See Draft Bill, s. 3. Several statutes conferring powers of entry now provide for identification to be produced on request: see, for example, *Building Code Act*, R.S.O. 1980, c. 51, s. 4(4); *Elevating Devices Act*, R.S.O. 1980, c. 135, s. 3(3); *Occupational Health and Safety Act*, R.S.O. 1980, c. 321, s. 6(2); and *Petroleum Resources Act*, R.S.O. 1980, c. 377, s. 2(4).

[27] See *supra*, ch. 3, at 20.

[28] See *supra*, ch. 4, at 40-41.

[29] See Draft Bill, s. 5.

ternal administrative efforts to supervise the exercise of powers of entry and will help to locate political accountability in the responsible authority. If there is a complaint from a member of the public, the maintenance of records will allow inquiries to proceed down the chain of command. In addition, the individual records, when examined together, will apprise supervisory officials of the manner in which subordinate personnel are discharging their duties and may form the basis for internal policy review.

(f) Use of Force

Notwithstanding that a government official has acted in a reasonable manner, and otherwise in compliance with the standards of the proposed *Powers of Entry Act* and other relevant legislation, an occupier of land may refuse to permit entry. This recalcitrance raises the question whether, and the circumstances in which, the entrant should be able to exercise the degree of force necessary to effect an entry. It will be recalled that, under the present law, it appears that a statutory power of entry includes a power to exert reasonable force where consent to entry is refused.[30] As we explained in chapter 3, although force is virtually never used to effect an entry, the present practice in Ontario reflects this understanding of the law.[31]

The issue that we have considered is whether the present law should be changed by the proposed *Powers of Entry Act*. On one side, it is possible to argue that force should not be used without first obtaining a warrant or other form of prior judicial authorization. This argument is grounded on the reasoning that forcible intrusion into premises, particularly in relation to a residence, involves a serious affront to individual dignity. Moreover, it may be asserted that the requirement of a warrant for the use of force would not, as a general rule, constitute an inordinate burden – for example, where it is not essential to rely on surprise to achieve the purpose of the entry, or where there is not an emergency that necessitates immediate action.

Against this view, it may be contended that a general statutory requirement of a warrant before force could be employed in effecting an entry would constitute a change in the law, in that a statutory power of entry could no longer prevail over a denial of consent by an occupier. Without the ability to rely on reasonable force in the face of recalcitrance, a government official has a power that is of little effect. Furthermore, a strict warrant requirement would involve formality and cost for public officials and, in certain circumstances, might lead to delays that would impede effective action.

We observe that certain statutes expressly make the use of force depend upon judicial authorization.[32] While we accept this position as a gen-

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[30] See *supra*, ch. 2, at 6-7.

[31] See *supra*, ch. 3, at 20.

[32] The following statutes create a power to enter and search premises, if necessary by force, if there has been prior authorization in the form of an order from a justice of the peace: *Business Practices Act*, R.S.O. 1980, c. 55, s. 11(4); *Collection Agencies Act*, R.S.O. 1980, c. 73, s. 16(4); *Consumer Reporting Act*, R.S.O. 1980, c. 89, s. 17(4); *Corporations Tax Act*, R.S.O. 1980, c. 97, s. 86(4); *Denture Therapists Act*, R.S.O.

eral rule, we believe that an effective compromise between efficient administration and concerns for privacy can be achieved by a rule requiring a warrant authorizing the use of force, except where the delay in obtaining the warrant would unreasonably interfere with the objective of the entry. Moreover, we observe that certain existing legislation expressly allows force to be employed without prior judicial authorization,[33] or expressly authorizes entry to be effected without a warrant. Given that these statutory provisions reflect the consideration of the Legislative Assembly, we believe they should be left intact. Accordingly, we recommend that, where an entry is refused, an entrant should not use force in the exercise of his power of entry without a warrant unless the Act by or under which the entry is authorized specifically provides that force may be used to effect the entry, or specifically provides that the entry may be made without warrant, or unless the delay in obtaining a warrant would unreasonably interfere with the objective of the entry.[34]

We now turn to consider the conditions under which such a warrant should be issued. In the criminal law context, search warrants are issued for the purpose of entering premises in order to obtain evidence in relation to the commission of a particular offence. Provincial powers of entry may be granted for various purposes, of which only one is the gathering of evidence in relation to a possible violation of the legislation. In many cases, entry will be made for reasons unrelated to this objective. Inspections of licensed businesses to ensure compliance with regulations, for example, would not necessarily be made in anticipation of detecting an offence. In view of the range of purposes for which entry powers may be given, it would, in our opinion, be entirely inappropriate to condition the issue of a warrant authorizing the use of force on the possible commission of an offence. Instead, we recommend that, where a warrant is required for the exercise of force and the Act authorizing the entry does not provide for the issuing of a warrant, a justice of the peace should be empowered to issue a warrant upon application and upon being satisfied of the following matters: (a) that the entry and entrant are authorized by law; (b) that the entry is reasonably necessary to achieve its objective; and (c) that reasonable efforts to effect the entry without the use of force have been made and have failed.[35]

1980, c. 115, s. 22(4); *Deposits Regulation Act*, R.S.O. 1980, c. 116, s. 5(8); *Funeral Services Act*, R.S.O. 1980, c. 180, s. 31(8); *Gasoline Tax Act*, R.S.O. 1980, c. 186, s. 16(4); *Health Disciplines Act*, R.S.O. 1980, c. 196, ss. 40(4), 64(4), 108(4), and 133(4); *Income Tax Act*, R.S.O. 1980, c. 213, s. 38(3); *Liquor Licence Act*, R.S.O. 1980, c. 244, s. 21(4); *Mortgage Brokers Act*, R.S.O. 1980, c. 295, s. 24(4); *Motor Vehicle Dealers Act*, R.S.O. 1980, c. 299, s. 13(4); *Motor Vehicle Fuel Tax Act*, R.S.O. 1980, c. 300, s. 21(3); *Paperback and Periodical Distributors Act*, R.S.O. 1980, c. 366, s. 11(4); *Public Commercial Vehicles Act*, R.S.O. 1980, c. 407, s. 33(5); *Public Health Act*, R.S.O. 1980, c. 409, s. 4(2); *Real Estate and Business Brokers Act*, R.S.O. 1980, c. 431, s. 15(4); *Retail Sales Tax Act*, R.S.O. 1980, c. 454, s. 29(4); *Tobacco Tax Act*, R.S.O. 1980, c. 502, s. 14(3); *Travel Industry Act*, R.S.O. 1980, c. 509, s. 20(4); and *Workmen's Compensation Act*, R.S.O. 1980, c. 539, s. 99(2).

[33] *Child Welfare Act*, R.S.O. 1980, c. 66, s. 21(3); *Game and Fish Act*, R.S.O. 1980, c. 182, s. 8(3); and *Endangered Species Act*, R.S.O. 1980, c. 138, s. 4.

[34] See Draft Bill, s. 6(1).

[35] *Ibid.*, s. 6(2). By requiring the court, before issuing a warrant authorizing the use of force, to find that the entrant has made reasonable, but unsuccessful, efforts to effect

(g) Civil Liability

What should be the position where an entrant fails to comply with the minimum standards that we recommend, or with the provisions of any Act, regulation, or by-law that confers a power of entry? To encourage observance, a majority of the Commission[36] recommends that an entrant

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entry, we are consistent with the recommendation contained in our *Report on the Enforcement of Judgment Debts and Related Matters* (1981), Part II, at 110, at least with respect to the conditions that must be met before the sheriff can use force to seize property under a writ of execution.

[36] Dr. Derek Mendes da Costa, Chairman of the Commission, dissents in part from this Recommendation:

> While I agree that the proposed *Powers of Entry Act* should create a cause of action for failure to reach its prescribed standards, I cannot concur with the recommendation insofar as it proposes the creation of a cause of action for a breach of the duty to comply with the provisions of any other Act, regulation or by-law that apply to the entry. This part of the recommendation, in my view, imputes to the Legislative Assembly of Ontario, in the case of all prior enactments, an intention to create civil liability, an intention that may not have been present when the relevant statutory powers were enacted.
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> When conduct violates both the proposed *Powers of Entry Act* and other legislation, the source of liability would not seem to be of great importance. However, where the conduct in question conforms to the minimum standards prescribed by the proposed *Powers of Entry Act*, but violates the provisions of other legislation, the issue becomes of critical significance. Of interest is *Her Majesty the Queen in Right of Canada v. Saskatchewan Wheat Pool*, a recently released — and as yet unreported — decision of the Supreme Court of Canada. In this case, Dickson J., with whom Ritchie, Beetz, Estey, McIntyre, Chouinard and Lamer JJ. concurred, in the course of discussing whether breach of statutory duty should form part of the law of negligence, as opposed to the recognition of a nominate tort of statutory breach, stated as follows:
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> > One of the main reasons for shifting a loss to a defendant is that he has been at fault, that he has done some act which should be discouraged. There is then good reason for taking money from the defendant as well as a reason for giving it to the plaintiff who has suffered from the fault of the defendant. But there seems little in the way of defensible policy for holding a defendant who breached a statutory duty unwittingly to be negligent and obligated to pay even though not at fault. The legislature has imposed a penalty on a strictly admonitory basis and there seems little justification to add civil liability when such liability would tend to produce liability without fault. The legislature has determined the proper penalty for the defendant's wrong but if tort admonition of liability without fault is to be added, the financial consequences will be measured, not by the amount of the penalty, but by the amount of money which is required to compensate the plaintiff. Minimum fault may subject the defendant to heavy liability. Inconsequential violations should not subject the violator to any civil liability at all but should be left to the criminal courts for enforcement of a fine.
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> > For all of the above reasons I would be adverse to the recognition in Canada of a nominate tort of statutory breach. Breach of statute, where it has an effect upon civil liability, should be considered in the context of the general law of negligence. Negligence and its common law duty of care have become pervasive enough to serve the purpose invoked for the existence of the action for statutory breach.
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> In my opinion, where, in the context of powers of entry, legislation is silent on the issue of civil liability, it is preferable to leave the issue to the courts to be determined on a case by case basis. [Footnote continued]

should have a duty to comply with the proposed *Powers of Entry Act* and with the provisions of any other Act, regulation, or by-law that apply to the entry, and that, where an entrant is in breach of the duty, any person affected thereby should have a cause of action in a court of competent jurisdiction against the entrant for damages resulting from the breach.[37]

Since the proposed *Powers of Entry Act* sets a general standard of reasonableness to be followed in exercising powers of entry, it follows that liability for breach of the Act would not be absolute, but would depend on a failure to reach this standard.

It should be noted that the above recommendation would impose a duty upon entrants to comply not only with the provisions of the proposed *Powers of Entry Act*, but also with the provisions of any Act, regulation or by-law that imposes standards higher than the minimum standards prescribed by the proposed Act, and would confer upon persons affected by a breach of that duty an express cause of action. Because a cause of action is given expressly, courts would not be forced to engage in the difficult exercise of determining whether legislation that does not address the question of civil liability nonetheless should be construed to confer a civil cause of action.

The provision in the proposed *Powers of Entry Act* of a specific remedy for abuse would supplement section 24(1) of the *Canadian Charter of Rights and Freedoms*, which provides that anyone whose rights or freedoms as guaranteed by the Charter have been infringed or denied – for example, a breach of section 8, which declares the right of everyone to be secure against unreasonable search or seizure – may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances. While it seems clear that a specific remedial provision cannot limit the authority of the courts under the Charter to provide a remedy in relation to the same incident, the availability of a specific remedy may be one factor that the courts will consider in determining whether a remedy under section 24 of the Charter is appropriate.

In the absence of an express statement of legislative intention, whether the civil liability should flow from the breach of a statutory duty is a difficult and troublesome question. To quote again from the reasons for judgment of Dickson J.:

> The uncertainty and confusion in the relation between breach of statute and a civil cause of action for damages arising from the breach is of long standing. The commentators have little but harsh words for the unhappy state of affairs, but arriving at a solution, from the disarray of cases, is extraordinarily difficult. It is doubtful that any general principle or rationale can be found in the authorities to resolve all of the issues or even those which are transcendent.

This difficulty would, of course, be removed if, in the case of future enactments relating to powers of entry, the legislation were to contain a clear statement of intention.

[37] See Draft Bill, s. 8(1). In our *Report on the Enforcement of Judgment Debts and Related Matters* (1981), Part II, we recommended, at 111-12, that, where the sheriff abuses his power to effect forcible entry, he should be subject to a civil action by the aggrieved party.

We further recommend that, where there is a breach, the public authority for which the entrant acts should be liable upon like principles as a master is liable in respect of torts committed by his servant.[38] Responsibility, then, would be based on a theory of vicarious liability. Visiting civil liability on the public authority on behalf of which a government official acts will encourage the authority to take effective measures to educate personnel and to supervise their conduct.

We believe that the creation of a civil cause of action would be an incomplete remedy if the question of damages was not addressed. It can be easily imagined that an entry that is effected in an unreasonable, arbitrary, and offensive manner may result in neither physical damage to the premises nor injury, either mental or physical, to the occupier. Where this is the case, if the damages awarded were restricted to general damages, there would be little reason for the occupier to initiate a civil action. Should an action be brought successfully, there would be equally little encouragement for the government official or public authority to ensure future compliance with the proper standards for entry. For this reason, we recommend that the proposed *Powers of Entry Act* should expressly empower the court to award special, general, or punitive damages, or any combination thereof.[39]

Reliance on awards of punitive or exemplary damages to deal with improper behaviour of government officials was expressly approved by the House of Lords in *Rookes v. Barnard*,[40] as being one of the two categories of situation in which such damages could properly be awarded.[41] In Ontario, the authority to award punitive damages has not been similarly restricted.[42] While it would appear, therefore, that a court certainly could award exemplary damages to punish an improper entry by a government

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[38] See Draft Bill, s. 8(1).

[39] *Ibid.*, s. 8(2).

[40] [1964] A.C. 1129, 1 All E.R. 367 (H.L.).

[41] Lord Devlin, who delivered one of the judgments of the House of Lords, referred to "oppressive, arbitrary or unconstitutional action by the servants of the government": [1964] A.C. 1129, at 1226 (H.L.).

[42] The question of punitive damages came before the Supreme Court of Canada in *McElroy v. Cowper-Smith*, [1967] S.C.R. 425, 62 D.L.R. (2d) 65 (subsequent reference is to S.C.R.). The majority disposed of the case on other grounds, which made it unnecessary to consider the merits of Lord Devlin's position in *Rookes v. Barnard*, *supra*, note 40. However, Spence J., in dissent, did deal with this issue. After holding that the particular case fell, in any event, within Lord Devlin's second "unjust enrichment" category, he went on to express the view that, in Canada, the jurisdiction to award punitive damages was not as limited as that in *Rookes v. Barnard*, so that the making of a profit was not a prerequisite to such an award: *supra*, this note, at 432-33. A similar position was taken by the Ontario Court of Appeal in *Gouzenko v. LeFolii*, [1967] 2 O.R. 262, at 268, 63 D.L.R. (2d) 217, at 223, where Kelly J.A., who delivered the decision of the Court, succinctly remarked that "whatever may be the law in England as enunciated in . . . *Rookes v. Barnard* . . . it is not the law of this Province".

See, generally, Catzman, "Exemplary Damages: The Decline, Fall and Resurrection of Rookes v. Barnard", in *Special Lectures of the Law Society of Upper Canada: New Developments in the Law of Torts* (1973) 41, and Fridman, "Punitive Damages in Tort" (1970), 48 Can. B. Rev. 373, at 388-95. Courts in Australia, Saskatchewan, Manitoba, and New Brunswick have also declined to follow the *Rookes* case, while the British Columbia authorities are divided.

official, we believe that it would be preferable, in order to put this matter beyond peradventure, to confer the power explicitly.

To provide further assurance of compliance with the minimum statutory standards that we have proposed, we believe that an aggrieved person should have an additional remedy. Accordingly, we recommend that, where it appears that an entrant or public authority is not complying with the proposed *Powers of Entry Act* or a provision of an Act, regulation, or by-law that applies to an entry, any person affected thereby should be able to apply to the Supreme Court, or a county or district court, for an order directing the entrant or public authority, or both, to comply, and the court should be empowered to make the order or such other order as it thinks fit.[43] We further recommend that an appeal should lie to the Divisional Court from any such order.[44]

(h) Regulations

The standards that we have recommended for incorporation in the proposed *Powers of Entry Act* constitute a minimum code of behaviour that we believe all government officials should follow.

In our view, it would be a very salutary measure if provisions were developed by regulation to control further the details of the manner of exercise of powers of entry under particular statutes: for example, regulations could be made to establish times and places for inspections, to specify notice provisions, and to detail the nature of the required identification and the content of an adequate record. This would serve to define and structure the discretionary power of subordinate officials, which would reduce the risk of abusive behaviour.

Because the exercise of powers of entry inevitably interferes with individual rights, we believe that there should be political accountability for regulations bearing upon this matter. Given the impact of these powers, we believe political responsibility for regulations should be borne by the Lieutenant Governor in Council, rather than by the Minister responsible for the administration of the Act under which the power of entry is given.[45] Accordingly, we recommend that an Act by or under which a power of entry is given should be deemed to authorize the Lieutenant Governor in Council to make regulations governing the manner in which the powers of entry must be exercised and reported.[46]

Under the *Regulations Act*,[47] all regulations stand permanently refer-

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[43] See Draft Bill, s. 7(1).

[44] *Ibid.*, s. 7(2).

[45] In Ontario, the power to make regulations is usually conferred on the Lieutenant Governor in Council. However, there are regulations that are neither made nor approved by the Lieutenant Governor in Council: see, for example, *Forest Fires Prevention Act*, R.S.O. 1980, c. 173, s. 37, and *Milk Act*, R.S.O. 1980, c. 266, s. 8.

[46] See Draft Bill, s. 9(1).

[47] R.S.O. 1980, c. 446.

red to the Standing Committee of the Legislative Assembly on Regulations for the purposes of section 12(3). The scope of this review, however, is limited, as section 12(3) provides as follows:

> 12.-(3) The Standing Committee on Regulations shall examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes, and shall deal with such other matters as are referred to it from time to time by the Assembly.

The Standing Committee is under a further duty to report to the Legislative Assembly of Ontario its observations, opinions and recommendations.[48]

Regulations that are made pursuant to the proposed *Powers of Entry Act* by the Lieutenant Governor in Council would, like all other regulations, be referred to the Standing Committee for examination. However, because these regulations deal with the exercise of powers of entry, and involve an inherent danger of abuse, we are of the view that the Standing Committee should be particularly vigilant to ascertain whether the regulations conform to the intention and the objective of the statute under which the power of entry is conferred. Under the terms of reference established in the *Regulations Act*, a review of this nature would appear to be foreclosed, as the Standing Committee is instructed to examine the regulations with particular reference to the scope and method of the exercise of delegated legislative power "but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes . . .". To overcome this limitation, we recommend that the proposed *Powers of Entry Act* should provide that, when a regulation is referred to the Standing Committee of the Legislative Assembly on Regulations, the Committee may, notwithstanding section 12(3) of the *Regulations Act*, review all aspects of the regulation, including matters of substance and policy respecting the use of powers of entry for the purposes of the regulation and enabling statute.[49]

Where regulations are made regarding powers of entry, they would assist courts in determining whether the proposed reasonableness standard has been observed.[50] We anticipate that courts might examine these provisions in much the same manner as, in tort law, custom is examined in determining negligence. Custom, while not constituting an absolute standard against which conduct is evaluated, serves as guidance to the courts in establishing a standard of care.[51]

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[48] *Ibid.*, s. 12(5).

[49] See Draft Bill, s. 9(2).

[50] *Ibid.*, s. 4.

[51] A court may find a custom to be unreasonable: see, for example, *Anderson v. Chasney* (1949), 57 Man. R. 343, [1949] 4 D.L.R. 71, [1949] 2 W.W.R. 337 (C.A.), aff'd [1950] 4 D.L.R. 223 (S.C.C.), and *Penner v. Theobald* (1962), 35 D.L.R. (2d) 700, 40 W.W.R. 216 (Man. C.A.), aff'g (1962), 38 W.W.R. 397 (Man. Q.B.). See, generally, Linden, *Canadian Tort Law* (3d ed., 1982), at 157-77.

Finally, regulations bearing upon powers of entry would be relevant in a judicial determination of the reasonableness of a particular search or seizure that might be subject to scrutiny under section 8 of the *Canadian Charter of Rights and Freedoms*.[52] Regulations, however, would not be determinative of the reasonableness of the practice: to the extent that they would have the effect of limiting the right to be secure against unreasonable search or seizure, they must, under section 1 of the Charter, constitute "such reasonable limits . . . as can be demonstrably justified in a free and democratic society" in order to be valid. A court could therefore find that the regulations constitute unreasonable limits on the legal right enunciated in section 8 of the Charter.

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[52] *Constitution Act, 1982*, Part I, appearing as Schedule B to the *Canada Act 1982*, c. 11 (U.K.).

RECOMMENDATIONS

The Commission makes the following recommendations:

1. In the future, powers of entry should be created expressly by statutes enacted by the Legislative Assembly of Ontario.

2. Minimum standards, embodied in a new *Powers of Entry Act*, should govern all powers of entry and all intrusive powers contained in the statutes, regulations, and by-laws in force in Ontario.

3. In the proposed *Powers of Entry Act*,

   (a) "entrant" should be defined to mean a person who is authorized to exercise a power of entry on behalf of a public authority;

   (b) "entry" should be defined to mean the entry, search, inspection, seizure, or act in aid of which a power of entry is given;

   (c) "power of entry" should be defined to mean the authority, express or implied, given by or under an Act to enter, search, inspect, or seize, or do any act in or respecting a place or thing in the possession of another without his consent, whether with or without a warrant; and

   (d) "public authority" should be defined to mean the Crown, a municipality, or other public body that is given public duties by or under an Act, in aid of which a power of entry is given.

4. The following minimum standards should govern the exercise of powers of entry:

   (a) Every entry should have an objective to which the entry should be confined.

   (b) An entrant should exercise a power of entry at a time and in a place and manner that is reasonable having regard to the objective of the entry.

   (c) Every entrant should, while exercising a power of entry, carry his identification, including evidence of his appointment and photograph, and upon the request of the person in possession of the place or thing in respect of which the power of entry is exercised, or of his servant or agent, should produce the identification and inform such person of the authority for and the objective of the entry.

   (d) Every entrant who exercises a power of entry should be obliged to

keep a record of each entry made and should report to the authority for which he acts.

5. (1) Where an entry is refused, an entrant should not use force in the exercise of his power of entry without a warrant unless the Act by or under which the entry is authorized specifically provides that force may be used to effect the entry, or specifically provides that the entry may be made without warrant, or unless the delay in obtaining a warrant would unreasonably interfere with the objective of the entry.

(2) Where a warrant is required for the exercise of force and the Act authorizing the entry does not provide for the issuing of a warrant, a justice of the peace should be empowered to issue a warrant upon application and upon being satisfied of the following matters: (a) that the entry and entrant are authorized by law; (b) that the entry is reasonably necessary to achieve its objective; and (c) that reasonable efforts to effect the entry without the use of force have been made and have failed.

*6. An entrant should have a duty to comply with the proposed *Powers of Entry Act* and with the provisions of any other Act, regulation, or by-law that apply to the entry and, where an entrant is in breach of the duty, any person affected thereby should have a cause of action in a court of competent jurisdiction against the entrant for damages resulting from the breach.

7. Where there is a breach of the duty recommended in Recommendation 6, the public authority for which the entrant acts should be liable upon like principles as a master is liable in respect of torts committed by his servant.

8. The proposed *Powers of Entry Act* should expressly empower the court to award special, general, or punitive damages or any combination thereof.

9. (1) Where it appears that an entrant or public authority is not complying with the proposed *Powers of Entry Act* or a provision of an Act, regulation, or by-law that applies to an entry, any person affected thereby should be able to apply to the Supreme Court, or a county or district court, for an order directing the entrant or public authority, or both, to comply, and the court should be empowered to make the order or such other order as it thinks fit.

(2) An appeal from an order made under Recommendation 9(1) should lie to the Divisional Court.

10. (1) An Act by or under which a power of entry is given should be

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* The Chairman of the Commission, Dr. Derek Mendes da Costa, dissents in part from this Recommendation: see ch. 5, note 36.

deemed to authorize the Lieutenant Governor in Council to make regulations governing the manner in which the powers of entry must be exercised and reported.

(2) The proposed *Powers of Entry Act* should provide that, when a regulation is referred to the Standing Committee of the Legislative Assembly on Regulations, the Committee may, notwithstanding subsection 12(3) of the *Regulations Act*, review all aspects of the regulation, including matters of substance and policy respecting the use of powers of entry for the purposes of the regulation and enabling statute.

CONCLUSION

It can be seen that our proposals for reforming the exercise of powers of entry are indeed modest. We have not created an absolute right to privacy. Rather, we have defined minimum standards that, we believe, will achieve a reasonable balance between the need for the governmental exercise of intrusive powers and the recognition of the value of privacy. Our proposals nevertheless go further than existing legislation in Ontario. If enacted, such a scheme would afford greater protection than is currently provided, without disturbing unduly the present regulatory processes. In addition, it would provide the courts with guidance in interpreting the *Canadian Charter of Rights and Freedoms*.

We wish to express our sincere appreciation to our Project Directors, Professor Alan Grant, of Osgoode Hall Law School, York University, and Professor Stanley M. Makuch, of the Faculty of Law, University of Toronto. Professors Grant and Makuch undertook, on our behalf, the research that underlies this Report, including a detailed review of the many powers of entry that are contained in the legislation of the Province. The information, statistical and empirical, that this Report contains, has been derived from the data that they collected.

We wish also to record our gratitude to Larry M. Fox, Esq., Legal Research Officer, for his scholarship and patient assistance during the preparation of this Report.

All of which is respectfully submitted,

Derek Mendes da Costa
Chairman

Richard A. Bell
Commissioner

H. Allan Leal
Vice Chairman

William R. Poole
Commissioner

Barry A. Percival
Commissioner

March 31, 1983

APPENDIX 1

Draft Bill

Bill 00 **198**

An Act to provide Standards in the Exercise of Powers of Entry

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Interpretation

1. In this Act,

(a) "entrant" means a person who is authorized to exercise a power of entry on behalf of a public authority;

(b) "entry" means the entry, search, inspection, seizure or act in aid of which a power of entry is given;

(c) "power of entry" means the authority, express or implied, given by or under an Act to enter, search, inspect or seize, or do any act in or respecting a place or thing in the possession of another without his consent, whether with or without a warrant;

(d) "public authority" means the Crown, a municipality or other public body that is given public duties by or under an Act, in aid of which a power of entry is given.

Objective of entry

2. Every entry shall have an objective to which the entry shall be confined.

Identification

3. Every entrant shall, while exercising a power of entry, carry his identification, including evidence of his appointment

and photograph, and upon the request of the person in possession of the place or thing in respect of which the power of entry is exercised, or of his servant or agent, shall produce the identification and inform such person of the authority for and the objective of the entry.

Reasonable time and place

4. An entrant shall exercise a power of entry at a time and in a place and manner that is reasonable having regard to the objective of the entry.

Report

5. Every entrant shall keep a record of each entry made and shall report to the public authority for which he acts.

Use of force

6.—(1) An entrant shall not use force in the exercise of his power of entry without a warrant for the entry, unless the Act by or under which the entry is authorized specifically provides that force may be used to effect the entry or that the entry may be made without warrant, or unless the delay in obtaining the warrant would unreasonably interfere with the objective of the entry.

Issuance of warrants

(2) Where a warrant is required for the purposes of subsection (1) and the Act authorizing the entry does not provide for the issuing of a warrant, a warrant may be issued by a justice of the peace upon application and upon being satisfied,

(a) that the entry and entrant are authorized by law;

(b) that the entry is reasonably necessary to achieve its objective; and

(c) that reasonable efforts to effect the entry without the use of force have been made and failed.

Restraining order

7.—(1) Where it appears that an entrant or public authority is not complying with this Act or a provision of an Act, regulation or by-law that applies to an entry, any person affected thereby may, in addition to any other remedy, apply to the Supreme Court, or a county or district court, for an order directing the entrant or public authority, or both, to comply and the court may make the order or such other order as the court thinks fit.

Appeal of restraining order

(2) An appeal lies to the Divisional Court from an order made under subsection (1).

Action for damages

8.—(1) An entrant has a duty to comply with this Act and the provisions of any other Act, regulation or by-law that

apply to the entry and where an entrant is in breach of the duty, any person affected thereby has a cause of action in a court of competent jurisdiction against the entrant for damages resulting from the breach, and the public authority for which he acts is also liable upon like principles as a master is liable in respect of torts committed by his servant.

Types of damage

(2) Damages awarded under subsection (1) may be special, general or punitive, or any combination of them.

Regulations

9.—(1) An Act, by or under which a power of entry is given, shall be deemed to authorize the Lieutenant Governor in Council to make regulations governing the manner in which the powers of entry must be exercised and reported.

Review by Standing Committee on Regulations

R.S.O. 1980, c. 446

(2) When a regulation made under subsection(1) is referred to the Standing Committee of the Legislative Assembly on Regulations, the Committee may, notwithstanding subsection 12(3) of the *Regulations Act*, review all aspects of the regulation, including matters of substance and policy respecting the use of powers of entry for the purposes of the regulation and enabling statute.

Act binds Crown

10. This Act binds the Crown.

Commencement

11. This Act comes into force on the day it receives Royal Assent.

Short title

12. The short title of this Act is the *Powers of Entry Act, 198*

APPENDIX 2

LEGISLATIVE PROVISIONS CONFERRING POWERS OF ENTRY

(a) Public Statutes

Abandoned Orchards Act, R.S.O. 1980, c. 1, ss. 3(1), 5(3).
Agricultural Tile Drainage Installation Act, R.S.O. 1980, c. 15, s. 11(2).
Ambulance Act, R.S.O. 1980, c. 20, s. 18(2).
Anatomy Act, R.S.O. 1980, c. 21, s. 9(1).
Animals for Research Act, R.S.O. 1980, c. 22, s. 18(3)-(5).
Apprenticeship and Tradesmen's Qualification Act, R.S.O. 1980, c. 24, s. 7(1).
Artificial Insemination of Live Stock Act, R.S.O. 1980, c. 29, s. 17(*j*).
Assessment Act, R.S.O. 1980, c. 31, s. 9(1).
Audit Act, R.S.O. 1980, c. 35, s. 10.
Bailiffs Act, R.S.O. 1980, c. 37, s. 13(5).
Beach Protection Act, R.S.O. 1980, c. 39, s. 8(1).
Beef Cattle Marketing Act, R.S.O. 1980, c. 41, s. 7(1).
Bees Act, R.S.O. 1980, c. 42, ss. 3(1), 4(4).
Blind Workmen's Compensation Act, R.S.O. 1980, c. 45, s. 7.
Boilers and Pressure Vessels Act, R.S.O. 1980, c. 46, ss. 5, 15, 22, 26, 34(2), 37(2).
Boundaries Act, R.S.O. 1980, c. 47, s. 5.
Bread Sales Act, R.S.O. 1980, c. 48, ss. 8, 9.
Brucellosis Act, R.S.O. 1980, c. 50, s. 9(1).
Building Code Act, R.S.O. 1980, c. 51, ss. 8(1), 10(1).
Business Corporations Act, R.S.O. 1980, c. 54, ss. 154(1), 155(1).
Business Practices Act, R.S.O. 1980, c. 55, s. 11(2)(*a*), 11(4).
Cancer Act, R.S.O. 1980, c. 57, s. 14(1).
Cemeteries Act, R.S.O. 1980, c. 59, ss. 16(1)(*a*), 26.
Charitable Institutions Act, R.S.O. 1980, c. 64, s. 10.
Child Welfare Act, R.S.O. 1980, c. 66, ss. 21(3), 22(3).
Children's Institutions Act, R.S.O. 1980, c. 67, s. 7(3).
Children's Mental Health Services Act, R.S.O. 1980, c. 69, s. 9(3)(*a*).
Children's Residential Services Act, R.S.O. 1980, c. 71, ss. 13(2), 14(3).
Collection Agencies Act, R.S.O. 1980, c. 73, ss. 12(3), 13, 16(2)(*a*), 16(4).
Colleges Collective Bargaining Act, R.S.O. 1980, c. 74, s. 82(1).
Commodity Futures Act, R.S.O. 1980, c. 78, s. 7.
Community Psychiatric Hospitals Act, R.S.O. 1980, c. 79, s. 9(*b*).
Condominium Act, R.S.O. 1980, c. 84, ss. 6(4), 21.
Conservation Authorities Act, R.S.O. 1980, c. 85, s. 21(*b*).
Consumer Protection Act, R.S.O. 1980, c. 87, ss. 9(3), 10(1).
Consumer Reporting Act, R.S.O. 1980, c. 89, ss. 15(3), 17(2)(*a*), 17(4).
Co-operative Corporations Act, R.S.O. 1980, c. 91, ss. 118, 119.
Co-operative Loans Act, R.S.O. 1980, c. 92, s. 11(2).
Coroners Act, R.S.O. 1980, c. 93, s. 16(1), 16(2).
Corporations Act, R.S.O. 1980, c. 95, ss. 96(5), 304(1), 305(1).
Corporations Tax Act, R.S.O. 1980, c. 97, s. 86(1), 86(4).
Credit Unions and Caisses Populaires Act, R.S.O. 1980, c. 102, ss. 12(2), 64(7), 75(2), 104, 138(1), 138(3).
Crop Insurance Act (Ontario), R.S.O. 1980, c. 104, s. 7(1)(*d*).
Crown Employees Collective Bargaining Act, R.S.O. 1980, c. 108, s. 41(1)(*a*), 41(1)(*b*).
Crown Timber Act, R.S.O. 1980, c. 109, ss. 19, 22(1).
Day Nurseries Act, R.S.O. 1980, c. 111, s. 16(3).
Dead Animal Disposal Act, R.S.O. 1980, c. 112, s. 15.
Denture Therapists Act, R.S.O. 1980, c. 115. s. 22(2), 22(4).
Deposits Regulation Act, R.S.O. 1980, c. 116, s. 5(5), 5(8).
Developmental Services Act, R.S.O. 1980, c. 118, s. 35(2).
Discriminatory Business Practices Act, R.S.O. 1980, c. 119, s. 8.

Dog Licensing and Live Stock and Poultry Protection Act, R.S.O. 1980, c. 123, s. 15(2).
Drainage Act, R.S.O. 1980, c. 126, ss. 12(1), 63(1), 80(1), 95(3).
Edible Oil Products Act, R.S.O. 1980, c. 128, s. 14(*h*).
Education Act, R.S.O. 1980, c. 129, ss. 15(6), 25(1), 51, 122(3), 136, 140(2), 183(3), 207(4).
Election Act, R.S.O. 1980, c. 133, ss. 19(5), 56(8).
Election Finances Reform Act, R.S.O. 1980, c. 134, ss. 6, 41(6).
Elevating Devices Act, R.S.O. 1980, c. 135, ss. 6(1)(*a*), 29(4).
Employment Agencies Act, R.S.O. 1980, c. 136, s. 14(*j*).
Employment Standards Act, R.S.O. 1980, c. 137, s. 45(1), 45(2).
Endangered Species Act, R.S.O. 1980, c. 138, s. 4.
Energy Act, R.S.O. 1980, c. 139, ss. 4, 9, 16.
Environmental Assessment Act, R.S.O. 1980, c. 140, ss. 22, 25(1), 25(2).
Environmental Protection Act, R.S.O. 1980, c. 141, ss. 41(2), 43, 67(2), 127(1), 128(2).
Expropriations Act, R.S.O. 1980, c. 148, ss. 7(9)(*d*), 10(3), 27(5), 41(1).
Farm Income Stabilization Act, R.S.O. 1980, c. 153, s. 4(3).
Farm Loans Act, R.S.O. 1980, c. 154, ss. 37, 42.
Farm Products Grades and Sales Act, R.S.O. 1980, c. 157, ss. 6(1), 7(1).
Farm Products Marketing Act, R.S.O. 1980, c. 158, ss. 4(1)(*g*), 4(1)(*h*), 13(6), 15(4), 22(7)(*a*).
Fire Marshals Act, R.S.O. 1980, c. 166, ss. 3(*l*), 12, 18(1).
Fish Inspection Act, R.S.O. 1980, c. 167, s. 3(1).
Forest Fires Prevention Act, R.S.O. 1980, c. 173, ss. 5(1), 7.
Forest Tree Pest Control Act, R.S.O. 1980, c. 174, ss. 3, 4.
Forestry Act, R.S.O. 1980, c. 175, s. 5.
Freshwater Fish Marketing Act (Ontario), R.S.O. 1980, c. 178, s. 5.
The Fruits and Vegetables Produce-for-Processing Act, 1974, S.O. 1974, c. 55 (to come into force upon proclamation), s. 7(1).
Funeral Services Act, R.S.O. 1980, c. 180, s. 31(3), 31(4), 31(6), 31(8).
Fur Farms Act, R.S.O. 1980, c. 181, s. 8.
Game and Fish Act, R.S.O. 1980, c. 182, ss. 8(1), 8(2), 11, 15.
Gasoline Handling Act, R.S.O. 1980, c. 185, s. 14(2).
Gasoline Tax Act, R.S.O. 1980, c. 186, s. 16(1), 16(4).
Grain Elevator Storage Act, R.S.O. 1980, c. 191, s. 6.
Health Disciplines Act, R.S.O. 1980, c. 196, ss. 40(2), 40(4), 64(2), 64(4), 108(2), 108(4), 133(2), 133(4), 144.
Health Insurance Act, R.S.O. 1980, c. 197, ss. 43(1), 46(1).
Highway Traffic Act, R.S.O. 1980, c. 198, ss. 41(4), 61(3), 82(3).
Homes for Retarded Persons Act, R.S.O. 1980, c. 201, s. 9.
Homes for Special Care Act, R.S.O. 1980, c. 202, s. 7(*b*).
Homes for the Aged and Rest Homes Act, R.S.O. 1980, c. 203, s. 21.
Hotel Fire Safety Act, R.S.O. 1980, c. 207, s. 16(1).
Income Tax Act, R.S.O. 1980, c. 213, ss. 34(1), 35(2), 38(1), 38(3).
Industrial Standards Act, R.S.O. 1980, c. 216, s. 13(2).
Insurance Act, R.S.O. 1980, c. 218, ss. 7(2), 13, 14(2), 15, 80(3), 350(7), 357(9).
Investment Contracts Act, R.S.O. 1980, c. 221, s. 17.
Labour Relations Act, R.S.O. 1980, c. 288, ss. 11, 31(*d*), 33(2), 35(2), 44(8)(*d*), 103(2)(*e*), 103(2)(*f*), 103(2)(*g*).
Lakes and Rivers Improvement Act, R.S.O. 1980, c. 229, ss. 15, 17(2)-(4), 18, 19, 24, 25(1), 29, 92.
Land Titles Act, R.S.O. 1980, c. 230, s. 96.
Land Transfer Tax Act, R.S.O. 1980, c. 231, s. 8(1).
Landlord and Tenant Act, R.S.O. 1980, c. 232, ss. 18, 19(2), 49.
Line Fences Act, R.S.O. 1980, c. 242, ss. 4(2), 6, 9(4), 11(4), 21(4).
Liquor Licence Act, R.S.O. 1980, c. 244, ss. 21(2), 21(4), 22, 23(1), 48(2).
Live Stock and Live Stock Products Act, R.S.O. 1980, c. 245, s. 11.

Live Stock Community Sales Act, R.S.O. 1980, c. 247, s. 17.
Live Stock Medicines Act, R.S.O. 1980, c. 248, s. 3.
Loan and Trust Corporations Act, R.S.O. 1980, c. 249, ss. 91(5), 100(9), 151(1), 154(1), 154(2), 159.
Local Roads Boards Act, R.S.O. 1980, c. 251, s. 33(2).
Meat Inspection Act, R.S.O. 1980, c. 260, s. 11.
Mental Health Act, R.S.O. 1980, c. 262, ss. 5(2), 46.
Mental Hospitals Act, R.S.O. 1980, c. 263, s. 5(2)(*e*).
Mental Incompetency Act, R.S.O. 1980, c. 264, ss. 4, 12, 13, 16, 18.
Milk Act, R.S.O. 1980, c. 266, ss. 4(2)(*f*), 5, 14(1).
Mining Act, R.S.O. 1980, c. 268, ss. 11(1), 89(1), 89(3), 105(1), 122, 189(1), 189(4).
Mining Tax Act, R.S.O. 1980, c. 269, s. 13(1).
Ministry of Community and Social Services Act, R.S.O. 1980, c. 273, s. 9(1)(*g*).
Ministry of Correctional Services Act, R.S.O. 1980, c. 275, s. 46.
Ministry of Government Services Act, R.S.O. 1980, c. 279, s. 7(3), 7(4).
Ministry of Labour Act, R.S.O. 1980, c. 284, ss. 9(3), 11(1).
Ministry of Natural Resources Act, R.S.O. 1980, c. 285, s. 6(7).
Mortgage Brokers Act, R.S.O. 1980, c. 295, ss. 20, 21(1), 21(2), 24(2), 24(4).
Motor Vehicle Dealers Act, R.S.O. 1980, c. 299, ss. 9, 10(1), 10(2), 13(2)(*a*), 13(4).
Motor Vehicle Fuel Tax Act, R.S.O. 1980, c. 300, ss. 3(9), 21(1), 21(3).
Municipal Act, R.S.O. 1980, c. 302, ss. 5, 23(1), 196(3), 196(8), 196(9), 210¶39, 210¶47, 210¶54, 210¶57, 210¶69, 210¶87, 210¶94, 210¶129, 210¶130, 210¶147, 210¶154, 219(3), 221(5), 222(5), 236(4), 307, 309¶9.
Municipal Health Services Act, R.S.O. 1980, c. 310, s. 6(3).
Municipality of Metropolitan Toronto Act, R.S.O. 1980, c. 314, ss. 46, 58(3), 64, 93(2), 254.
Niagara Escarpment Planning and Development Act, R.S.O. 1980, c. 316, s. 24(6).
Nursing Homes Act, R.S.O. 1980, c. 320, ss. 11, 12(2), 17(1), 17(2).
Occupational Health and Safety Act, R.S.O. 1980, c. 321, s. 28.
Ombudsman Act, R.S.O. 1980, c. 325, s. 26(1).
Ontario Deposit Insurance Corporation Act, R.S.O. 1980, c. 328, ss. 31(1), 31(2), 34(1).
Ontario Energy Board Act, R.S.O. 1980, c. 332, ss. 14, 21(1), 48(10), 53, 59.
Ontario Guaranteed Annual Income Act, R.S.O. 1980, c. 336, s. 15(1).
Ontario Heritage Act, R.S.O. 1980, c. 337, ss. 38(1), 45, 62(1), 64(1), 69(5).
Ontario Highway Transport Board Act, R.S.O. 1980, c. 338, s. 18(1).
Ontario Human Rights Code, R.S.O. 1980, c. 340, s. 16.
Ontario Land Corporation Act, R.S.O. 1980, c. 342, s. 15.
Ontario Mental Health Foundation Act, R.S.O. 1980, c. 345, s. 27(2)(*b*).
Ontario Mineral Exploration Program Act, R.S.O. 1980, c. 346, s. 12(1).
Ontario Municipal Board Act, R.S.O. 1980, c. 347, ss. 37, 52.
Ontario New Home Warranties Plan Act, R.S.O. 1980, c. 350, s. 18.
Ontario Pensioners Property Tax Assistance Act, R.S.O. 1980, c. 352, s. 16(1).
Ontario Planning and Development Act, R.S.O. 1980, c. 354, s. 15(1).
Ontario Telephone Development Corporation Act, R.S.O. 1980, c. 357, s. 6(1)(*b*).
Ontario Water Resources Act, R.S.O. 1980, c. 361, ss. 10(1), 10(2), 11, 25(2), 46(3), 47(4).
Ontario Youth Employment Act, R.S.O. 1980, c. 362, s. 6.
Operating Engineers Act, R.S.O. 1980, c. 363, s. 3(2).
County of Oxford Act, R.S.O. 1980, c. 365, ss. 48, 123.
Paperback and Periodical Distributors Act, R.S.O. 1980, c. 366, ss. 10(1), 10(2), 11(2), 11(4).
Pawnbrokers Act, R.S.O. 1980, c. 372, s. 15.
Pension Benefits Act, R.S.O. 1980, c. 373, s. 7(2)(*a*).
Pesticides Act, R.S.O. 1980, c. 376, s. 17(2), 17(3).
Petroleum Products Price Freeze Act, 1975, S.O. 1975, c. 66, s. 4(1).
Petroleum Resources Act, R.S.O. 1980, c. 377, s. 3.

Pits and Quarries Control Act, R.S.O. 1980, c. 378, ss. 11(3), 13.
Planning Act, R.S.O. 1980, c. 379, ss. 43(4), 43(5), 43(21)(*a*), 46(1)¶6, 46(1)¶9(a), 46(1)¶15-¶18.
Plant Diseases Act, R.S.O. 1980, c. 380, s. 13.
Power Corporation Act, R.S.O. 1980, c. 384, ss. 23(1), 23(2), 32(1), 63, 72(4), 93(9).
Prepaid Hospital and Medical Services Act, R.S.O. 1980, c. 388, s. 15(1).
Private Hospitals Act, R.S.O. 1980, c. 389, s. 23(2), 23(3).
Private Investigators and Security Guards Act, R.S.O. 1980, c. 390, s. 17(2).
Private Sanitaria Act, R.S.O. 1980, c. 391, ss. 30, 44(2).
Private Vocational Schools Act, R.S.O. 1980, c. 392, s. 14(1).
Provincial Courts Act, R.S.O. 1980, c. 398, s. 29(3)-(5).
Provincial Land Tax Act, R.S.O. 1980, c. 399, s. 8(1).
Provincial Offences Act, R.S.O. 1980, c. 400, s. 142(1).
Public Commercial Vehicles Act, R.S.O. 1980, c. 407, s. 33(1), 33(3), 33(5).
Public Health Act, R.S.O. 1980, c. 409, ss. 4(1), 4(2), 4(3), 7, 32, 33(1), 70(3), 70(4), 84(1), 88(5), 103, 104(1), 105, 117(1), 128(1), 134(1), 136(1), 137(3), 140, 141(1), 143(1), 147, 156.
Public Inquiries Act, R.S.O. 1980, c. 411, s. 17(2).
Public Institutions Inspection Act, R.S.O. 1980, c. 412, s. 5(1).
Public Lands Act, R.S.O. 1980, c. 413, ss. 23(3), 34(3), 62(2), 62(4), 72.
Public Libraries Act, R.S.O. 1980, c. 414, s. 25.
Public Officers Act, R.S.O. 1980, c. 415, s. 15.
Public Parks Act, R.S.O. 1980, c. 417, ss. 9, 15.
Public Service Act, R.S.O. 1980, c. 418, s. 25(1).
Public Transportation and Highway Improvement Act, R.S.O. 1980, c. 421, ss. 6, 30(8), 34(7), 98(4), 108(2).
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Race Tracks Tax Act, R.S.O. 1980, c. 428, s. 3(2), 3(3).
Racing Commission Act, R.S.O. 1980, c. 429, s. 11(*p*).
The Railways Act, R.S.O. 1950, c. 331, as amended, ss. 53(*a*), 53(*d*), 53(*m*), 59(1), 95(1), 96(1), 103(2), 136, 140, 173(2), 261(2), 302.
Real Estate and Business Brokers Act, R.S.O. 1980, c. 431, ss. 11(3), 12(1), 12(2), 15(2), 15(3), 15(4).
Regional Municipality of Durham Act, R.S.O. 1980, c. 434, ss. 19(1), 48(3), 135.
Regional Municipality of Haldimand-Norfolk Act, R.S.O. 1980, c. 435, ss. 19(1), 47(3), 118.
Regional Municipality of Halton Act, R.S.O. 1980, c. 436, ss. 19(1), 47(3), 128.
Regional Municipality of Hamilton-Wentworth Act, R.S.O. 1980, c. 437, ss. 18(1), 46(3), 140.
Regional Municipality of Niagara Act, R.S.O. 1980, c. 438, ss. 18(1), 43, 54(3), 60, 87(4), 167.
Regional Municipality of Ottawa-Carleton Act, R.S.O. 1980, c. 439, ss. 22(1), 40(3), 46, 72(4), 170.
Regional Municipality of Peel Act, R.S.O. 1980, c. 440, ss. 19(1), 47(3), 123.
Regional Municipality of Sudbury Act, R.S.O. 1980, c. 441, ss. 18(1), 63(4), 110.
Regional Municipality of Waterloo Act, R.S.O. 1980, c. 442, ss. 18(1), 38(1), 42, 53(3), 58, 82(1), 158.
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Replevin Act, R.S.O. 1980, c. 449, ss. 4, 5, 6.
Residential Tenancies Act, R.S.O. 1980, c. 452, s. 26(2), 26(5).
Retail Sales Tax Act, R.S.O. 1980, c. 454, s. 29(1), 29(4).
Riding Horse Establishments Act, R.S.O. 1980, c. 455, s. 10.
Road Access Act, R.S.O. 1980, c. 457, s. 3.

Royal Ontario Museum Act, R.S.O. 1980, c. 458, s. 7(3).
Rural Power District Loans Act, R.S.O. 1980, c. 461, s. 8(1).
The Ryerson Polytechnical Institute Act, 1977, S.O. 1977, c. 47, s. 16(1).
Securities Act, R.S.O. 1980, c. 466, ss. 11(3), 11(6), 18(1), 137(1).
Seed Potatoes Act, R.S.O. 1980, c. 467, ss. 6, 12.
Sheriffs Act, R.S.O. 1980, c. 470, s. 26.
Shoreline Property Assistance Act, R.S.O. 1980, c. 471, s. 4.
Small Claims Courts Act, R.S.O. 1980, c. 476, ss. 137(1), 161, 178(1)(*a*).
Snow Roads and Fences Act, R.S.O. 1980, c. 477, ss. 11(1), 12(1).
Statutory Powers Procedure Act, R.S.O. 1980, c. 484, s. 12(1).
St. Clair Parkway Commission Act, R.S.O. 1980, c. 485, s. 4(1).
St. Lawrence Parks Commission Act, R.S.O. 1980, c. 486, s. 6(*a*).
Stock Yards Act, R.S.O. 1980, c. 487, s. 5(1)(*a*).
Surveys Act, R.S.O. 1980, c. 493, s. 6(1).
Telephone Act, R.S.O. 1980, c. 496, ss. 13(1), 27, 31.
Theatres Act, R.S.O. 1980, c. 498, ss. 3(3), 4(2), 8(1), 8(2).
Tile Drainage Act, R.S.O. 1980, c. 500, s. 4.
Tobacco Tax Act, R.S.O. 1980, c. 502, s. 14(1), 14(3).
Tourism Act, R.S.O. 1980, c. 507, s. 13.
Training Schools Act, R.S.O. 1980, c. 508, ss. 7(1), 19.
Travel Industry Act, R.S.O. 1980, c. 509, ss. 17(1), 17(2), 18(3), 20(2), 20(4).
Trees Act, R.S.O. 1980, c. 510, s. 4(2).
University Expropriations Powers Act, R.S.O. 1980, c. 516, s. 2(1).
Upholstered and Stuffed Articles Act, R.S.O. 1980, c. 517, ss. 7(3), 8, 19(1).
Venereal Diseases Prevention Act, R.S.O. 1980, c. 521, s. 27.
Weed Control Act, R.S.O. 1980, c. 530, ss. 10, 11(9), 13, 14, 16(2).
Woodmen's Employment Act, R.S.O. 1980, c. 536, s. 7.
Wool Marketing Act, R.S.O. 1980, c. 538, s. 7(1).
Workmen's Compensation Act, R.S.O. 1980, c. 539, ss. 81(*e*), 99(2), 101(1).

(b) Private Acts

The Town of Kenora Act, 1933, S.O. 1933, c. 83, s. 2(1).
The Thousand Islands Bridge Company Act, 1933, S.O. 1933, c. 101, s. 9(*c*).
The City of Toronto Act, 1936, S.O. 1936, c. 84, s. 6(6), as enacted by S.O. 1967, c. 131, s. 6(3), and amended by S.O. 1976, c. 105, s. 4(3); 6(10), as enacted by S.O. 1938, c. 73, s. 6, and amended by S.O. 1955, c. 117, s. 4; 6(41), as enacted by S.O. 1967, c. 131, s. 6(7); and 6(42), as enacted by S.O. 1975, c. 116, s. 5(2).
The Township of Teck Act, 1938, S.O. 1938, c. 72, s. 3.
The Township of Barton Act, 1939, S.O. 1939, c. 55, s. 13.
The City of Toronto Act, 1939, S.O. 1939, c. 73, s. 5(2).
The Malton Water Company Act, 1941, S.O. 1941, c. 69, s. 5(*d*).
The National Steel Car Corporation Limited Sewage Disposal Act, 1941, S.O. 1941, c. 70, s. 3.
The Town of Timmins Act, 1941, S.O. 1941, c. 80, s. 5(1).
The Town of Orillia Act, 1946, S.O. 1946, c. 132, s. 2.
The City of Ottawa Act, 1947, S.O. 1947, c. 135, s. 4.3.
The City of Toronto Act, 1948, S.O. 1948, c. 129, s. 10(1)3.
The Township of Sandwich West Act, 1949, S.O. 1949, c. 138, s. 1(2).
The City of Toronto Act, 1949, S.O. 1949, c. 142, s. 10(2), as amended by S.O. 1950, c. 116, s. 2(2).
The City of Hamilton Act, 1951, S.O. 1951, c. 103, ss. 1(1)(*l*), 2(1)(*d*).
The City of Fort William Act, 1952, S.O. 1952, c. 120, s. 5.
The City of Ottawa Act, 1952, S.O. 1952, c. 130, s. 1(6), 1(10).
The Township of Etobicoke Act, 1956, S.O. 1956, c. 103, s. 1(12).
The Township of North York Act, 1956, S.O. 1956, c. 111, s. 1.
The City of Toronto Act, 1956, S.O. 1956, c. 125, s. 2.

The City of London Act, 1957, S.O. 1957, c. 142, ss. 1(1), 4(1), 6.
The Queen's University at Kingston Act, 1958, S.O. 1958, c. 150, s. 1.
The Waterloo College Associate Faculties Act, 1958, S.O. 1958, c. 164, s. 1.
The City of Windsor Act, 1958, S.O. 1958, c. 166, s. 4(6), 4(9), as amended by S.O. 1958. c. 183, s. 1(5).
The Laurentian University of Sudbury Act, 1960, S.O. 1960, c. 151, s. 4(1)(*g*), as enacted by S.O. 1961-62, c. 154, s. 2.
The Township of North York Act, 1960, S.O. 1960, c. 156, ss. 2(2), 3(4).
The University of Sudbury Act, 1960, S.O. 1960, c. 173, s. 2.
The City of Peterborough Act, 1960-61 (No. 2), S.O. 1960-61, c. 124, s. 5.
The City of Belleville Act, 1962-63 (No. 2), S.O. 1962-63, c. 150, s. 5.
The Trent University Act, 1962-63, S.O. 1962-63, c. 192, s. 25.
The University of Windsor Act, 1962-63, S.O. 1962-63, c. 194, s. 12.
The Township of York Act, 1962-63 (No. 2), S.O. 1962-63, c. 200, s. 2(5).
The Brock University Act, 1964, S.O. 1964, c. 127, s. 21.
The University of Ottawa Act, 1964, S.O. 1964, c. 148, s. 1(1).
The City of Ottawa Act, 1966, S.O. 1966, c. 179, s. 4(6), 4(10).
The City of Ottawa Act, 1968, S.O. 1968, c. 164, ss. 3, 4.
The City of Windsor Act, 1968, S.O. 1968, c. 183, ss. 1(3), 2(3).
The Borough of East York Act, 1968-69, S.O. 1968-69, c. 148, s. 1(6), 1(10).
The Town of Lindsay Act, 1968-69, S.O. 1968-69, c. 151, s. 5.
The City of Niagara Falls Act, 1968-69, S.O. 1968-69, c. 158, ss. 3(3), 5(5), 6.
The City of Barrie Act, 1970, S.O. 1970, c. 138, s. 5.
The City of London Act, 1970, S.O. 1970, c. 154, s. 1.
The City of Sault Ste. Marie Act, 1970, S.O. 1970, c. 164, ss. 3(2), 5(2), 5(10).
The City of Barrie Act, 1971, S.O. 1971, Vol. 1, c. 105, s. 1.
The Town of Burlington Act, 1971, S.O. 1971, Vol. 1, c. 108, s. 3(5).
The City of Sault Ste. Marie Act, 1971, S.O. 1971, Vol. 1, c. 125, s. 3.
The City of Toronto Act, 1971, S.O. 1971, Vol. 1, c. 130, s. 11(7)(*a*), 11(10), 11(34).
The City of Windsor Act, 1971, S.O. 1971, Vol. 1, c. 133, s. 3.3.
The City of Sarnia Act, 1972 (No. 1), S.O. 1972, c. 190, s. 2(7)(*a*), 2(10), 2(33).
The City of Toronto Act, 1972 (No. 2), S.O. 1972, c. 199, s. 2(2), 2(4).
The City of Windsor Act, 1972, S.O. 1972, c. 204, s. 1(6).
The City of Sault Ste. Marie Act, 1973, S.O. 1973, c. 205, s. 2(*c*).
The City of Toronto Act, 1975 (No. 2), S.O. 1975, c. 117, s. 3(3).
The City of Toronto Act, 1976, S.O. 1976, c. 105, s. 3(1), 3(2).
The Borough of York Act, 1976, S.O. 1976, c. 111, s. 1(*a*).
The City of Ottawa Act, 1977, S.O. 1977, c. 96, s. 4(2), 4(3).
The City of Thunder Bay Act, 1977, S.O. 1977, c. 108, s. 2(1)(*f*).
The City of Mississauga Act, 1978, S.O. 1978, c. 132, ss. 2(2)(*d*), 5(2), 8(2)(*b*).
The City of Ottawa Act, 1978, S.O. 1978, c. 134, s. 3(2).
The Borough of East York Act, 1979, S.O. 1979, c. 123, s. 5.
The City of Ottawa Act, 1979, S.O. 1979, c. 135, s. 6.
The City of Sarnia Act, 1979, S.O. 1979, c. 137, s. 1(3).

(c) Regulations

Regulation 66 under the *Artificial Insemination of Live Stock Act*, R.R.O. 1980, Reg. 66, ss. 15(5), 30(2).
Regulation 78 under the *Beach Protection Act*, R.R.O. 1980, Reg. 78, s. 12.
Regulation 80 under the *Beef Cattle Marketing Act*, R.R.O. 1980, Reg. 80, s. 6.
Regulation 84 under the *Boilers and Pressure Vessels Act*, R.R.O. 1980, Reg. 84, s. 24.
Regulation 95 under the *Charitable Institutions Act*, R.R.O. 1980, Reg. 95, s. 13.
Regulation 101 under the *Children's Residential Services Act*, R.R.O. 1980, Reg. 101, s. 9.

Regulation 115 under the *Community Psychiatric Hospitals Act*, R.R.O. 1980, Reg. 115, s. 12.

Regulations under the *Crop Insurance Act (Ontario)*

R.R.O. 1980, Reg. 198, Form 1, para. 16.
R.R.O. 1980, Reg. 199, Form 1, para. 20.
R.R.O. 1980, Reg. 202, Form 1, para. 19.
R.R.O. 1980, Reg. 203, Form 1, para. 19.
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R.R.O. 1980, Reg. 208, Form 1, para. 16.
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R.R.O. 1980, Reg. 212, Form 1, para. 20.
R.R.O. 1980, Reg. 215, Form 1, para. 16.
R.R.O. 1980, Reg. 216, Form 1, para. 16.
R.R.O. 1980, Reg. 217, Form 1, para. 19.
R.R.O. 1980, Reg. 218, Form 1, para. 17.
R.R.O. 1980, Reg. 219, Form 1, para. 16.
R.R.O. 1980, Reg. 221, Form 1, para. 16.
R.R.O. 1980, Reg. 224, Form 1, para. 16.
R.R.O. 1980, Reg. 225, Form 1, para. 20.
R.R.O. 1980, Reg. 226, Form 1, para. 24.
R.R.O. 1980, Reg. 227, Form 1, para. 19.
R.R.O. 1980, Reg. 229, Form 1, para. 21.
R.R.O. 1980, Reg. 231, Form 1, para. 15.

Regulation 234 under the *Crown Timber Act*, R.R.O. 1980, Reg. 234, s. 25.

Regulation 235 under the *Day Nurseries Act*, R.R.O. 1980, Reg. 235, s. 26(2)(*a*).

Regulation 236 under the *Dead Animal Disposal Act*, R.R.O. 1980, Reg. 236, s. 27.

Regulation 238 under the *Denture Therapists Act*, R.R.O. 1980, Reg. 238, s. 7.19.

Regulation 254 under the *Edible Oil Products Act*, R.R.O. 1980, Reg. 254, s. 8(1).

Regulation 280 under the *Employment Agencies Act*, R.R.O. 1980, Reg. 280, s. 20.

Regulation 327 under the *Farm Products Grades and Sales Act*, R.R.O. 1980, Reg. 327, s. 61.

Regulation 329 under the *Farm Products Grades and Sales Act*, R.R.O. 1980, Reg. 329, s. 3(1)(*g*).

Regulations under the *Farm Products Marketing Act*

R.R.O. 1980, Reg. 341, s. 9(*b*).
R.R.O. 1980, Reg. 344, s. 7(*c*).
R.R.O. 1980, Reg. 346, s. 6(*c*).
R.R.O. 1980, Reg. 350, s. 4(*c*).
R.R.O. 1980, Reg. 352, s. 3(*c*).
R.R.O. 1980, Reg. 357, s. 4(*c*).
R.R.O. 1980, Reg. 360, s. 3(*c*).
R.R.O. 1980, Reg. 362, s. 4(*c*).
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R.R.O. 1980, Reg. 366, s. 4(*c*).
R.R.O. 1980, Reg. 368, s. 4(*c*).
R.R.O. 1980, Reg. 371, s. 6(*c*).
R.R.O. 1980, Reg. 373, s. 4(*c*).
R.R.O. 1980, Reg. 375, s. 4(*c*).
R.R.O. 1980, Reg. 377, s. 10(*c*).
R.R.O. 1980, Reg. 379, s. 8(*c*).
R.R.O. 1980, Reg. 381, s. 6(*c*).
R.R.O. 1980, Reg. 383, s. 3(*c*).
R.R.O. 1980, Reg. 385, s. 7(*c*).
R.R.O. 1980, Reg. 388, s. 5(*c*).
R.R.O. 1980, Reg. 390, s. 8(3)(*c*).

Regulation 357 under the *Farm Products Marketing Act*, R.R.O. 1980, Reg. 357, s. 14.
Regulation 399 under the *Funeral Services Act*, R.R.O. 1980, Reg. 399, s. 13(8).
Regulation 441 under the *General Welfare Assistance Act*, R.R.O. 1980, Reg. 441, s. 8(2).
Regulation 443 under the *Grain Elevator Storage Act*, R.R.O. 1980, Reg. 443, s. 4.
Regulations under the *Health Disciplines Act*
R.R.O. 1980, Reg. 447, s. 37.29.
R.R.O. 1980, Reg. 448, s. 29(3).
R.R.O. 1980, Reg. 450, ss. 26.26, 28(5)(*a*), 35.
R.R.O. 1980, Reg. 451, ss. 47(*u*), 65.
Regulation 500 under the *Homes for Retarded Persons Act*, R.R.O. 1980, Reg. 500, s. 11.
Regulation 501 under the *Homes for Special Care Act*, R.R.O. 1980, Reg. 501, ss. 21(1), 21(2), 38, 39.
Regulation 502 under the *Homes for the Aged and Rest Homes Act*, R.R.O. 1980, Reg. 502, s. 48.
Regulation 540 under the *Judicature Act* and the *Matrimonial Causes Act*, R.R.O. 1980, Reg. 540, rr. 265, 266, 372, 372(2).
Regulation 581 under the *Liquor Licence Act*, R.R.O. 1980, Reg. 581, ss. 8(11), 8(19), 49.
Regulation 586 under the *Livestock Community Sales Act*, R.R.O. 1980, Reg. 586, s. 12(*a*).
Regulations under the *Loan and Trust Corporations Act*
R.R.O. 1980, Reg. 589, s. 14.
R.R.O. 1980, Reg. 593, ss. 3(2)(*b*)(i), 4(1)(*c*)(i), 5(2)(*c*)(i), 6(2)(*c*)(i).
R.R.O. 1980, Reg. 597, ss. 3(2)(*b*)(i), 4(1)(*c*)(i), 5(2)(*c*)(i), 7(2)(*c*)(i).
Regulation 649 under the *Ministry of Correctional Services Act*, R.R.O. 1980, Reg. 649, s. 54.
Regulation 696 under the *Oleomargarine Act*, R.R.O. 1980, Reg. 696, s. 10(1).
Regulation 728 under the *Ontario New Home Warranties Act*, R.R.O. 1980, Reg. 728, s. 1.2.
Regulation 806 under the *Provincial Court (Civil Division) Project Act*, R.R.O. 1980, Reg. 806, s. 42(4).
Regulations under the *Public Health Act*
R.R.O. 1980, Reg. 834, s. 32(1).
R.R.O. 1980, Reg. 840, s. 65.
R.R.O. 1980, Reg. 847, s. 4.
R.R.O. 1980, Reg. 849, s. 32.
R.R.O. 1980, Reg. 852, s. 2(2).
R.R.O. 1980, Reg. 853, s. 41.
R.R.O. 1980, Reg. 855, s. 13.
Regulation 917 under the *Small Claims Courts Act*, R.R.O. 1980, Reg. 917, ss. 17, 32.
Regulation 950 under the *Workmen's Compensation Act*, R.R.O. 1980, Reg. 950, s. 7.

APPENDIX 3

LIST OF INTERVIEWEES

Ministry or Other	Act	Department	Position	Name of Interviewee	Date
Government of Ontario					
Agriculture and Food	Artificial Insemination of Live Stock Act	Production and Rural Development Division, Live Stock Branch	Commissioner	McGill	19/9/80
Colleges and Universities	Apprenticeship and Tradesmen's Qualification Act	Apprenticeship Branch	Manager	Goodman	23/9/80
Community and Social Services	Child Welfare Act Private Hospitals Act Education Act	Children's Services Division	Inspector	Neilly	19/9/80
	Day Nurseries Act	Children's Services (Central Region)	Programme Supervisor	Engel	23/9/80
Consumer and Commercial Relations	Athletics Control Act Bailiffs Act Business Corporations Act Business Practices Act Collection Agencies Act Consumer Protection Act Consumer Reporting Act Corporations Information Act Discriminatory Business Practices Act Mortgage Brokers Act Motor Vehicle Dealers Act Paperback and Periodical Distributors Act Partnerships Registration Act Real Estate and Business Brokers Act Travel Industry Act	Business Practices Division, Investigation and Enforcement Branch	Director	Coleclough	8 & 11/9/80
	Condominium Act	Business Practices Division, Investigation and Enforcement Branch	Investigator	Tulloch	24/9/80

Ministry or Other	Act	Department	Position	Name of Interviewee	Date
Government of Ontario					
Consumer and Commercial Relations	Liquor Licence Act Hotel Fire Safety Act Theatres Act	Liquor Licence Board of Ontario, Inspection Branch	Acting Director	Mitchell	16/9/80
			Manager (District 2)	Henderson	16/9/80
	Boilers and Pressure Vessels Act Operating Engineers Act	Technical Standards Division, Pressure Vessels Safety Branch	Director	Wright	17/9/80
	Securities Act Commodity Futures Act	Ontario Securities Commission	Deputy Director Enforcement	Leybourne	18/9/80
	Racing Commission Act	Ontario Racing Commission	Deputy Director	Aldous	18/9/80
	Insurance Act Loan and Trust Corporations Act Credit Unions Act and Caisses Populaires Act Co-operative Corporations Act Cemeteries Act Motor Vehicle Accident Claims Act Investment Contracts Act Compulsory Automobile Insurance Act	Financial Institutions Division	Executive Director	Thompson	19/9/80
	Residential Tenancy Act	Residential Tenancy Commission	Chief Tenancy Commissioner and Chairman	Williams	23/9/80
			Counsel	Hermant	23/9/80
Education	Education Act	Regional Services Division	Provincial School Attendance Counsellor	Johnson	15/10/80
			Counsel	Copeland	15/10/80
Energy	Energy Act Ontario Energy Board Act	Ontario Energy Board	Counsel	Graholm	29/9/80
Environment	Environmental Assessment Act Environmental Protection Act Ontario Water Resources Act Pesticides Act	Regional Operations and Laboratories Division, Municipal and Private Abatement (Central Region)	Assistant Regional Director	Trewin	17/11/80

Ministry or Other	Act	Department	Position	Name of Interviewee	Date
Government of Ontario					
Health	Venereal Diseases Prevention Act	Health and Diseases Control Section, Public Health Branch	Senior Medical Consultant	Persad	21/10/80
	Public Health Act	Public Health Branch	Area Consultant for Public Health Inspection	Porter	8/10/80
Intergovernmental Affairs	Municipal Act	Local Government Division, Local Government Organization Branch	Manager	Dolbey	15/10/80
Labour	Employment Agencies Act Employment Standards Act Industrial Standards Act Ministry of Labour Act Government Contracts, Hours and Wages Act	Employment Standards Branch	Coordinator, Program Development and Evaluation	Wehrenberg Scott	8/10/80 8/10/80
Revenue	Assessment Act	Assessment Services Division, Field Operations Branch	Director of Field Operations	Donohue	1/12/80
Solicitor General	Private Investigators and Security Guards Act	Registration Branch, Private Investigators and Security Guards Section	Staff Sergeant OPP	Stroud	23/9/80
			Detective Sergeant OPP	Oxenham	23/9/80
			Inspector OPP	Simmons	23/9/80
	Fire Marshals Act	Public Safety Division, Office of the Fire Marshal	Deputy Fire Marshal	Williams	5/9/80
			Senior Investigator	Foster	5/9/80

Ministry	Act	Department	Position	Name of Interviewee	Date
Government of Ontario					
Transportation and Communications	Public Commercial Vehicles Act Public Vehicles Act	Regional Operations Division, Investigations and Prosecutions Section	Manager	Gregory	10/10/80
Independent Government Bodies					
Commission on Election Contributions and Expenses	Election Finances Reform Act		Executive Director	Joynt	3/10/80
Autonomous Bodies					
Housing and Urban Development Association of Canada	Ontario New Home Warranties Plan Act		Deputy Registrar	Hart	25/9/80
College of Physicians and Surgeons	Health Disciplines Act		Executive Director	Henderson	10/11/80
City of Toronto (Department of Public Health under supervision of the Board of Health of the City of Toronto)	Public Health Act	Division of Food Control and Sanitation	Director	Connery	18/11/80
City of Toronto	Building Code Act Planning Act	Building Inspection	Supervisor	Breeze	17/11/80

APPENDIX 4

LIST OF GROUPS CONSULTED

Automobile Dealers Association of Ontario
Association of Investigators and Guard Agencies of Ontario
Canadian Boiler Society
Canadian Civil Liberties Association
Canadian Life Association
Canadian Manufacturers Association
Canadian Restaurant Association
Confederation of Residents and Ratepayers Associations (Toronto)(C.O.R.R.A.)
Credit Union Central
National Association of Canadian Racetracks
National Federation of Self-Employed and Small Businesses Ltd.
Ontario Association of Alternative and Independent Schools
Ontario Council of Housing and Urban Development Association of Canada (HUDAC)
Ontario Harness Horsemen's Association
Ontario Hotel and Motel Association
Ontario Natural Gas Association
Ontario Trucking Association
The Toronto Stock Exchange

APPENDIX 5

POWERS OF ENTRY PROJECT
QUESTIONNAIRE

Date: Interviewer:
Interviewee:
Ministry:
Branch/Section:
Position Held:

Current Use of Powers

1. What use do you actually make of such powers of entry, search, seizure, destruction or otherwise that you have under Ontario statutes? (List in descending order of frequency)
2. Who actually makes use of these powers in your section and how do they go about it? (e.g. Do you give notice, show ID, obtain permission?)
3. How is the user's exercise of the power supervised?
4. Do officials of other Government departments also exercise these powers for any purpose?

Adequacy and Appropriateness of Powers

5. What additional powers do you feel you need to do your job effectively?
6. Could you do your job effectively without having any of the powers you currently have?
7. Are there any powers that you have now that you do not, in fact, use?

Procedural Requirements

8. Would it be practicable for you to give notice to an owner or occupant of intention to act or for you to obtain approval of some sort before taking action?

Abuse of Power

9. Have you or any members of your department had complaints made by citizens about the use of entry, search, seizure, destruction or similar powers? (Name source, e.g. letter, Ombudsman's office, Court actions)
10. If improper use of power is alleged, how, in your experience, has it been dealt with administratively?

APPENDIX 6

Libraries to which the Appendix, "Legislative Powers of Entry in Ontario" Has Been Distributed

Brock University, St. Catherines
Carleton University, Ottawa
Faculty of Law, Common Law Section, University of Ottawa, Ottawa
Faculty of Law, Queen's University, Kingston
Faculty of Law, University of Toronto, Toronto
Faculty of Law, University of Western Ontario, London
Faculty of Law, University of Windsor, Windsor
Lakehead University, Thunder Bay
Laurentian University, Sudbury
McMaster University, Hamilton
Osgoode Hall Law School of York University, Toronto
Trent University, Peterborough
University of Guelph, Guelph
University of Waterloo, Waterloo
Wilfred Laurier University, Waterloo

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